

117TH CONGRESS
2D SESSION

S. 5303

To amend the Employee Retirement Income Security Act of 1974 to allow health marketplace pools to be deemed an employer under section 3(5) of such Act for purposes of offering a group health plan or group health insurance coverage, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 20, 2022

Mr. PAUL introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 to allow health marketplace pools to be deemed an employer under section 3(5) of such Act for purposes of offering a group health plan or group health insurance coverage, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Health Marketplace
5 for All Act of 2022”.

1 **SEC. 2. HEALTH MARKETPLACE POOLS DEEMED AN “EM-**
2 **LOYER” FOR PURPOSES OF OFFERING**
3 **GROUP HEALTH PLANS OR GROUP HEALTH**
4 **INSURANCE COVERAGE.**

5 (a) **DEFINITION OF EMPLOYER.**—Section 3(5) of the
6 Employee Retirement Income Security Act of 1974 (29
7 U.S.C. 1002(5)) is amended by adding at the end the fol-
8 lowing: “Such term shall be deemed to include, for pur-
9 poses of offering a group health plan (as defined in section
10 733(a)(1)) or group health insurance coverage (as defined
11 in section 733(b)(4)) (which, notwithstanding any other
12 provision of law, may include such a plan or coverage cov-
13 ering prescription or nonprescription drugs as the only
14 benefit offered by the plan or coverage in accordance with
15 section 736(b)(5)(B)), any entity that meets the require-
16 ments under section 736(b).”.

17 (b) **GROUP HEALTH PLANS AND GROUP HEALTH IN-**
18 **SURANCE COVERAGE.**—Part 7 of subtitle B of title I of
19 the Employee Retirement Income Security Act of 1974
20 (29 U.S.C. 1181 et seq.) is amended by adding at the end
21 the following:

1 ing an employee of an employer or a dependent
2 of an employee).

3 “(2) OFFERING GROUP HEALTH PLANS AND
4 GROUP HEALTH INSURANCE COVERAGE.—

5 “(A) DIFFERENT GROUPS.—

6 “(i) IN GENERAL.—The health mar-
7 ketplace pool, which may be in conjunction
8 with a health insurance issuer that offers
9 group health insurance coverage through
10 the health marketplace pool, shall make
11 available a group health plan or group
12 health insurance coverage to all members
13 of the health marketplace pool (and, in the
14 case of members that are employers, em-
15 ployees of the employers) at rates that—

16 “(I) are established by the health
17 marketplace pool, or a health insur-
18 ance issuer contracting with such
19 health marketplace pool, on a policy
20 or product specific basis; and

21 “(II) subject to sections 701 and
22 702, may vary for individuals covered
23 through the health marketplace pool.

24 “(ii) PERMISSIBLE COVERAGE FOR
25 DEPENDENTS.—Such group health plan or

1 group health insurance coverage may be
2 made available under clause (i) to any de-
3 pendents of members of the health market-
4 place pool or dependents of employees of
5 employers that are such members.

6 “(B) NONDISCRIMINATION IN COVERAGE
7 OFFERED.—

8 “(i) IN GENERAL.—Subject to clause
9 (ii), the health marketplace pool may not
10 offer coverage under a group health plan
11 or group health insurance coverage to a
12 member of the health marketplace pool un-
13 less the same coverage is offered to all
14 such members of the health marketplace
15 pool.

16 “(ii) CONSTRUCTION.—Nothing in
17 this subsection shall be construed as re-
18 quiring a health insurance issuer or group
19 health plan to provide coverage outside the
20 service area of the issuer or plan, or pre-
21 venting a health insurance issuer or group
22 health plan from underwriting or from ex-
23 cluding or limiting the coverage on any in-
24 dividual, subject to the requirements under
25 sections 701 and 702.

1 “(C) ASSUMPTION OF RISK.—The health
2 marketplace pool may provide—

3 “(i) group health insurance coverage
4 through a contract with a health insurance
5 issuer; or

6 “(ii) a group health plan through self-
7 insurance.

8 “(3) GEOGRAPHIC AREAS.—Nothing in this
9 subsection shall be construed as preventing the es-
10 tablishment and operation of more than 1 health
11 marketplace pool in a geographic area or as limiting
12 the number of health marketplace pools that may
13 operate in any area.

14 “(4) PROVISION OF ADMINISTRATIVE SERVICES
15 TO PURCHASERS.—The health marketplace pool may
16 provide administrative services for members. Such
17 services may include accounting, billing, and enroll-
18 ment information.

19 “(5) DRUG COVERAGE.—The group health plan
20 or group health insurance coverage offered by the
21 health marketplace pool may offer—

22 “(A) drug coverage, including coverage of
23 over-the-counter drugs, in combination with
24 other benefits covered by the group health plan
25 or group health insurance coverage; or

1 “(B) notwithstanding any other provision
2 of law, drug coverage, including coverage of
3 over-the-counter drugs, as the only benefit cov-
4 ered by the group health plan or group health
5 insurance coverage.

6 “(6) MEMBERS.—

7 “(A) IN GENERAL.—With respect to an in-
8 dividual who is a member of the health market-
9 place pool—

10 “(i) the individual may enroll for cov-
11 erage under the group health plan or
12 group health insurance coverage offered by
13 the health marketplace pool (including, if
14 applicable, enrollment for coverage for a
15 dependent of such individual); or

16 “(ii) the employer of the individual
17 may enroll the individual for coverage
18 under the group health plan or group
19 health insurance coverage offered by the
20 health marketplace pool (including, if ap-
21 plicable, enrollment for coverage for a de-
22 pendent of such individual).

23 “(B) ELIGIBILITY.—An individual shall be
24 eligible to be a member of the health market-
25 place pool if such individual is—

1 “(i) a member of an entity that estab-
2 lishes or joins the health marketplace pool
3 (or a dependent of such a member, as ap-
4 plicable);

5 “(ii) an employee of a member of an
6 entity described in clause (i) (or a depend-
7 ent of such an employee, as applicable); or

8 “(iii) an employee of an entity (or a
9 dependant of such an employee, as applica-
10 ble) controlled by a member of an entity
11 described in clause (i).

12 “(C) RULES FOR ENROLLMENT.—Nothing
13 in this paragraph shall preclude the health mar-
14 ketplace pool from establishing rules of enroll-
15 ment and reenrollment of members. Such rules
16 shall be applied consistently to all members
17 within the health marketplace pool and shall
18 not be based in any manner on health status-
19 related factors in accordance with sections 701
20 and 702.

21 “(c) DETERMINATION OF EMPLOYER AND JOINT EM-
22 PLOYER STATUS.—Participating in or facilitating a group
23 health plan or group health insurance coverage under this
24 section shall not be construed as establishing under any
25 Federal or State law—

1 “(1) an employer relationship for any purpose
2 other than offering the group health plan or group
3 health insurance coverage; or

4 “(2) a joint employer relationship for any pur-
5 pose.

6 “(d) DEFINITION.—In this section, the term ‘depend-
7 ent’, as applied to a group health plan or group health
8 insurance coverage offered in a State, shall have the mean-
9 ing applied to such term with respect to such plan or cov-
10 erage under the State law applying to such plan or cov-
11 erage. Such term may include the spouse and children of
12 the individual involved in accordance with such State
13 law.”.

14 **SEC. 3. CONFORMING AMENDMENTS.**

15 Section 3 of the Employee Retirement Income Secu-
16 rity Act of 1974 (29 U.S.C. 1002) is amended—

17 (1) in paragraph (6), by inserting before the pe-
18 riod “, except (with respect to an entity meeting the
19 requirements under section 736(b)) such term in-
20 cludes any member of such entity”;

21 (2) in paragraph (21)—

22 (A) in subparagraph (A), by striking “sub-
23 paragraph (B)” and inserting “subparagraphs
24 (B) and (C)”;

25 (B) by adding at the end the following:

1 “(C) With respect to a person that is a member of
2 an entity (referred to in section 736 and this subpara-
3 graph as a ‘health marketplace pool’) that meets the re-
4 quirements of section 736(b) and offers a group health
5 plan (as defined in section 733(a)(1)) or group health in-
6 surance coverage (as defined in section 733(b)(4)) (which,
7 notwithstanding any other provision of law, may include
8 such a plan or coverage covering prescription or non-
9 prescription drugs as the only benefit offered by the plan
10 or coverage), membership in the health marketplace pool
11 shall not by itself cause the person to be a fiduciary with
12 respect to the group health plan or group health insurance
13 coverage.”; and

14 (3) in paragraph (40)(A)—

15 (A) in clause (ii), by striking “, or” and in-
16 serting “,”;

17 (B) in clause (iii), by striking the period
18 and inserting “, or”; and

19 (C) by adding at the end the following:

20 “(iv) as a group health plan (as defined in sec-
21 tion 733(a)(1)), or group health insurance coverage
22 (as defined in section 733(b)(4)), offered by an enti-
23 ty meeting the requirements under section 736(b)
24 (which, notwithstanding any other provision of law,
25 may include such an entity offering such a plan or

1 coverage covering prescription or nonprescription
2 drugs as the only benefit offered by the plan or cov-
3 erage).”.

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