

116TH CONGRESS
2D SESSION

S. 3610

To amend the Employee Retirement Income Security Act of 1974 to allow health share 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

MAY 5, 2020

Mr. PAUL (for himself, Mr. ROMNEY, Mr. LANKFORD, Mrs. BLACKBURN, Ms. ERNST, Mr. BRAUN, and Mr. SASSE) 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 share 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 “American Healthshare
5 Plans Act of 2020”.

1 **SEC. 2. HEALTHSHARE POOLS DEEMED AN “EMPLOYER”**
2 **FOR PURPOSES OF OFFERING GROUP**
3 **HEALTH PLANS OR GROUP HEALTH INSUR-**
4 **ANCE 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 735(b)(5)(B)), any entity that meets the require-
16 ments under section 735(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 **“SEC. 735. HEALTHSHARE POOLS DEEMED AN ‘EMPLOYER’**
2 **FOR PURPOSES OF OFFERING GROUP**
3 **HEALTH PLANS OR GROUP HEALTH INSUR-**
4 **ANCE COVERAGE.**

5 “(a) IN GENERAL.—An entity (referred to in this sec-
6 tion as a ‘healthshare pool’) that meets the requirements
7 under subsection (b) shall be deemed an employer under
8 section 3(5) for purposes of offering a group health plan
9 or group health insurance coverage (which, notwith-
10 standing any other provision of law, may include such a
11 plan or coverage covering prescription or nonprescription
12 drugs as the only benefit offered by the plan or coverage
13 in accordance with subsection (b)(5)(B)).

14 “(b) REQUIREMENTS FOR HEALTHSHARE POOLS.—
15 The requirements under this subsection are each of the
16 following:

17 “(1) ORGANIZATION.—The healthshare pool
18 shall—

19 “(A) be formed and maintained in good
20 faith for a purpose that includes the formation
21 of a risk pool in order to offer group health in-
22 surance coverage or a group health plan to its
23 members; and

24 “(B) not condition membership in the
25 healthshare pool on any health status-related
26 factor relating to an individual (including an

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

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

5 “(A) DIFFERENT GROUPS.—

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

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

21 “(II) subject to sections 701 and
22 702, may vary for individuals covered
23 through the healthshare 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 healthshare
4 pool or dependents of employees of employ-
5 ers that are such members.

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

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

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

1 “(C) ASSUMPTION OF RISK.—The
2 healthshare 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
11 healthshare pool in a geographic area or as limiting
12 the number of healthshare pools that may operate in
13 any area.

14 “(4) PROVISION OF ADMINISTRATIVE SERVICES
15 TO PURCHASERS.—The healthshare pool may pro-
16 vide administrative services for members. Such serv-
17 ices may include accounting, billing, and enrollment
18 information.

19 “(5) DRUG COVERAGE.—The group health plan
20 or group health insurance coverage offered by the
21 healthshare 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 healthshare
9 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 healthshare pool (including, if applica-
14 ble, enrollment for coverage for a depend-
15 ent 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 healthshare pool (including, if applicable,
21 enrollment for coverage for a dependent of
22 such individual).

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

1 “(i) a member of an entity that estab-
2 lishes or joins the healthshare pool (or a
3 dependent of such a member, as applica-
4 ble);

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 healthshare
14 pool from establishing rules of enrollment and
15 reenrollment of members. Such rules shall be
16 applied consistently to all members within the
17 healthshare pool and shall not be based in any
18 manner on health status-related factors in ac-
19 cordance with sections 701 and 702.

20 “(c) DETERMINATION OF EMPLOYER AND JOINT EM-
21 PLOYER STATUS.—Participating in or facilitating a group
22 health plan or group health insurance coverage under this
23 section shall not be construed as establishing under any
24 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 735(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)”; and

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 735 and this subpara-
3 graph as a ‘healthshare pool’) that meets the requirements
4 of subsection (b) of such section 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 healthshare pool shall not
11 by itself cause the person to be a fiduciary with respect
12 to the group health plan or group health insurance cov-
13 erage.”; 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 735(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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