

116TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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Mr. PAUL introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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).”.