

(Original Signature of Member)

119TH CONGRESS  
2D SESSION

# H. R.

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 HOUSE OF REPRESENTATIVES

Ms. VAN DUYNE introduced the following bill; which was referred to the Committee on \_\_\_\_\_

# 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 2026~~".

"Healthcare Freedom and Fairness Act"

1 **SEC. 2. HEALTH MARKETPLACE POOLS DEEMED AN “EM-**  
2 **PLOYER” 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)”; 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 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).”.