

119TH CONGRESS
1ST SESSION

S. 3362

To amend the Internal Revenue Code of 1986 to increase the limitations on contributions to health savings accounts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 4, 2025

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

A BILL

To amend the Internal Revenue Code of 1986 to increase the limitations on contributions to health savings accounts, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Health Marketplace and Savings Accounts for All Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—HEALTH SAVINGS ACCOUNTS

Sec. 101. Short title.

Sec. 102. Increase in contribution limitations.

- Sec. 103. Freedom from mandate.
- Sec. 104. Amounts paid for health insurance or direct primary care service arrangement.
- Sec. 105. Special rule for certain medical expenses incurred before establishment of account.
- Sec. 106. Administrative error correction before due date of return.
- Sec. 107. Allowing HSA rollover to child or parent of account holder.
- Sec. 108. Coverage for amounts paid for vitamins, dietary supplements, gym memberships, and wearable fitness trackers.
- Sec. 109. Equivalent bankruptcy protections for health savings accounts as retirement funds.

TITLE II—HEALTH MARKETPLACE FOR ALL

- Sec. 201. Short title.
- Sec. 202. Health marketplace pools deemed an “employer” for purposes of offering group health plans or group health insurance coverage.
- Sec. 203. Conforming amendments.

1 **TITLE I—HEALTH SAVINGS** 2 **ACCOUNTS**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Health Savings Ac-
5 counts For All Act of 2025”.

6 **SEC. 102. INCREASE IN CONTRIBUTION LIMITATIONS.**

7 (a) IN GENERAL.—Subsection (b) of section 223 of
8 the Internal Revenue Code of 1986 is amended—

9 (1) in paragraph (1), by striking “the sum of”
10 and all that follows through the period and inserting
11 “an amount equal to the applicable dollar amount
12 under paragraph (1)(B) of section 402(g) (as ad-
13 justed pursuant to paragraph (4) of such section)
14 with respect to such taxable year.”,

15 (2) by striking paragraphs (2), (3), (5), (7),
16 and (8),

1 (3) by inserting after paragraph (1) the fol-
 2 lowing:

3 “(2) ADDITIONAL CONTRIBUTIONS FOR INDIVIDUALS 50 OR OLDER.—In the case of an individual
 4 who has attained age 50 before the close of the tax-
 5 able year, the amount of the limitation under para-
 6 graph (1) shall be increased by an amount equal to
 7 the applicable dollar amount under subparagraph
 8 (B)(i) of section 414(v)(2) (as adjusted pursuant to
 9 subparagraph (C) of such section).”,
 10 subparagraph (C) of such section).”,

11 (4) in paragraph (4), by striking the flush mat-
 12 ter following subparagraph (C), and

13 (5) by redesignating paragraphs (4) and (6) as
 14 paragraphs (3) and (4), respectively.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Subparagraph (A) of section 223(d)(1) of
 17 the Internal Revenue Code of 1986 is amended by
 18 striking “the sum of—” and all that follows through
 19 the period and inserting “the amount determined
 20 under subsection (b)(1).”.

21 (2) Subsection (g)(1) of section 223 of such
 22 Code is amended—

23 (A) by striking “(b)(2), (c)(2)(A), and”
 24 and inserting “(c)(2)(A) and,”,

1 (B) by amending subparagraph (B) to read
 2 as follows:

3 “(B) the cost-of-living adjustment deter-
 4 mined under section 1(f)(3) for the calendar
 5 year in which such taxable year begins deter-
 6 mined by substituting ‘calendar year 2003’ for
 7 ‘calendar year 2016’ in subparagraph (A)(ii)
 8 thereof.”, and

9 (C) by striking “(b)(2), (c)(1)(E)(ii)(II),”
 10 and inserting “(c)(1)(E)(ii)(II)”.

11 (3) Section 26(b)(2)(S) of such Code is amend-
 12 ed by striking “, 223(b)(8)(B)(i)(II),”.

13 (4) Section 408(d)(9)(C)(i)(I) of such Code is
 14 amended by striking “computed on the basis of the
 15 type of coverage under the high deductible health
 16 plan covering the individual”.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to taxable years beginning after
 19 the date of the enactment of this Act.

20 **SEC. 103. FREEDOM FROM MANDATE.**

21 (a) IN GENERAL.—Section 223 of the Internal Rev-
 22 enue Code of 1986, as amended by section 102, is further
 23 amended by striking subsections (c) and (g) and by redes-
 24 ignating subsections (d), (e), (f), and (h) as subsections
 25 (c), (d), (e), and (f), respectively.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Subsection (a) of section 223 of the Inter-
3 nal Revenue Code of 1986 is amended to read as fol-
4 lows:

5 “(a) DEDUCTION ALLOWED.—In the case of an indi-
6 vidual, there shall be allowed as a deduction for the tax-
7 able year an amount equal to the aggregate amount paid
8 in cash during such taxable year by or on behalf of such
9 individual to a health savings account of such individual.”.

10 (2) Subsection (c)(1)(A) of section 223 of such
11 Code, as amended by section 102 and redesignated
12 by subsection (a), is further amended by striking
13 “subsection (f)(4)” and inserting “subsection
14 (e)(4)”.

15 (3) Subparagraph (U) of section 26(b)(2) of
16 such Code, as amended by section 102, is further
17 amended by striking “section 223(f)(3)” and insert-
18 ing “section 223(e)(3)”.

19 (4) Sections 35(g)(3), 220(f)(5)(A),
20 848(e)(1)(B)(v), 4973(a)(5), and 6051(a)(12) of
21 such Code are each amended by striking “section
22 223(d)” each place it appears and inserting “section
23 223(c)”.

24 (5) Section 106(d)(1) of such Code is amend-
25 ed—

1 (A) by striking “who is an eligible indi-
2 vidual (as defined in section 223(c)(1))”, and

3 (B) by striking “section 223(d)” and in-
4 serting “section 223(c)”.

5 (6) Section 106(e) of such Code is amended—

6 (A) by striking paragraphs (3) and (4) and
7 by redesignating paragraph (5) as paragraph
8 (4),

9 (B) by inserting after paragraph (2) the
10 following new paragraph:

11 “(3) TREATMENT AS ROLLOVER CONTRIBU-
12 TION.—A qualified HSA distribution shall be treated
13 as a rollover contribution described in section
14 223(e)(4).”, and

15 (C) by striking “to any eligible individual
16 covered under a high deductible health plan of
17 the employer” in paragraph (4)(B)(ii) (as so re-
18 designated) and inserting “to any employee
19 with respect to whom a health savings account
20 has been established”.

21 (7) Section 408(d)(9)(A) of such Code is
22 amended by striking “who is an eligible individual
23 (as defined in section 223(c)) and”.

1 (8) Section 877A(g)(6) of such Code is amend-
 2 ed by striking “223(f)(4)” and inserting
 3 “223(e)(4)”.

4 (9) Section 4973(g) of such Code is amended—

5 (A) by striking “section 223(d)” and in-
 6 serting “section 223(c)”,

7 (B) in paragraph (1), by striking “or
 8 223(f)(5)” and inserting “or 223(e)(5)”,

9 (C) in paragraph (2)(A), by striking “sec-
 10 tion 223(f)(2)” and inserting “section
 11 223(e)(2)”, and

12 (D) in the flush matter at the end, by
 13 striking “section 223(f)(3)” and inserting “sec-
 14 tion 223(e)(3)”.

15 (10) Section 4975 of such Code is amended—

16 (A) in subsection (c)(6)—

17 (i) by striking “section 223(d)” and
 18 inserting “section 223(c)”, and

19 (ii) by striking “section 223(e)(2)”
 20 and inserting “section 223(d)(2)”, and

21 (B) in subsection (e)(1)(E), by striking
 22 “section 223(d)” and inserting “section
 23 223(c)”.

24 (11) Subsection (b) of section 4980G of such
 25 Code is amended to read as follows:

1 “(b) RULES AND REQUIREMENTS.—

2 “(1) IN GENERAL.—An employer meets the re-
3 quirements of this subsection for any calendar year
4 if the employer makes available comparable con-
5 tributions to the health savings accounts of all com-
6 parable participating employees for each coverage
7 period during such calendar year.

8 “(2) COMPARABLE CONTRIBUTIONS.—

9 “(A) IN GENERAL.—For purposes of para-
10 graph (1), the term ‘comparable contributions’
11 means contributions—

12 “(i) which are the same amount, or

13 “(ii) if the employees are covered by a
14 health plan, which are the same percentage
15 of the annual deductible limit under the
16 plan covering the employees.

17 “(B) PART-YEAR EMPLOYEES.—In the
18 case of an employee who is employed by the em-
19 ployer for only a portion of the calendar year,
20 a contribution to the health savings account of
21 such employee shall be treated as comparable if
22 it is an amount which bears the same ratio to
23 the comparable amount (determined without re-
24 gard to this subparagraph) as such portion
25 bears to the entire calendar year.

1 “(3) COMPARABLE PARTICIPATING EMPLOY-
 2 EES.—For purposes of paragraph (1), the term
 3 ‘comparable participating employees’ means all em-
 4 ployees who are covered (if at all) under the same
 5 health plan of the employer and have the same cat-
 6 egory of coverage. For purposes of the preceding
 7 sentence, the categories of coverage are self-only and
 8 family coverage.

9 “(4) PART-TIME EMPLOYEES.—

10 “(A) IN GENERAL.—Paragraph (3) shall
 11 be applied separately with respect to part-time
 12 employees and other employees.

13 “(B) PART-TIME EMPLOYEE.—For pur-
 14 poses of subparagraph (A), the term ‘part-time
 15 employee’ means any employee who is custom-
 16 arily employed for fewer than 30 hours per
 17 week.”.

18 (12) Section 4980G(d) of such Code is amended
 19 by striking “section 4980E” and inserting “this sec-
 20 tion”.

21 (13) Section 6693(a)(2)(C) of such Code is
 22 amended by striking “section 223(h)” and inserting
 23 “section 223(f)”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 the date of the enactment of this Act.

4 **SEC. 104. AMOUNTS PAID FOR HEALTH INSURANCE OR DI-**
 5 **RECT PRIMARY CARE SERVICE ARRANGE-**
 6 **MENT.**

7 (a) IN GENERAL.—Paragraph (2) of section 223(c)
 8 of the Internal Revenue Code of 1986, as redesignated by
 9 section 3, is amended—

10 (1) in subparagraph (A), by inserting “or pur-
 11 suant to an arrangement under which an individual
 12 is provided coverage restricted to primary care serv-
 13 ices in exchange for a fixed periodic fee or payment
 14 for primary care services” after “menstrual care
 15 products”,

16 (2) by striking subparagraphs (B) and (C), and

17 (3) by redesignating subparagraph (D) as sub-
 18 paragraph (B).

19 (b) CONFORMING AMENDMENT.—Paragraph (2) of
 20 section 223(c) of the Internal Revenue Code of 1986, as
 21 amended by the preceding sections of this Act, is further
 22 amended by striking “and any dependent (as defined in
 23 section 152, determined without regard to subsections
 24 (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual”
 25 and inserting “any dependent (as defined in section 152,

1 determined without regard to subsections (b)(1), (b)(2),
 2 and (d)(1)(B) thereof) of such individual, and any child
 3 (as defined in section 152(f)(1)) of such individual who
 4 has not attained the age of 27 before the end of such indi-
 5 vidual's taxable year”.

6 (c) TECHNICAL AMENDMENTS.—

7 (1) Section 220(d)(2)(A) of the Internal Rev-
 8 enue Code of 1986 is amended by striking “section
 9 223(d)(2)(D)” and inserting “section 223(c)(2)(B)”.

10 (2) Subsection (f) of section 106 of the Internal
 11 Revenue Code of 1986 is amended by striking “sec-
 12 tion 223(d)(2)(D)” and inserting “section
 13 223(c)(2)(B)”.

14 (d) EFFECTIVE DATES.—

15 (1) IN GENERAL.—The amendments made by
 16 subsections (a) and (b) shall apply with respect to
 17 amounts paid after the date of the enactment of this
 18 Act in taxable years beginning after such date.

19 (2) TECHNICAL AMENDMENTS.—The amend-
 20 ments made by subsection (c) shall apply with re-
 21 spect to taxable years beginning after the date of en-
 22 actment of this Act.

1 **SEC. 105. SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES**
 2 **INCURRED BEFORE ESTABLISHMENT OF AC-**
 3 **COUNT.**

4 (a) IN GENERAL.—Paragraph (2) of section 223(c)
 5 of the Internal Revenue Code of 1986, as amended and
 6 redesignated by the preceding sections of this Act, is fur-
 7 ther amended by adding at the end the following new sub-
 8 paragraph:

9 “(C) CERTAIN MEDICAL EXPENSES IN-
 10 CURRED BEFORE ESTABLISHMENT OF ACCOUNT
 11 TREATED AS QUALIFIED.—An expense shall not
 12 fail to be treated as a qualified medical expense
 13 solely because such expense was incurred before
 14 the establishment of the health savings account
 15 if such expense was incurred—

16 “(i) during either—

17 “(I) the taxable year in which the
 18 health savings account was estab-
 19 lished, or

20 “(II) the preceding taxable year,
 21 in the case of a health savings ac-
 22 count established after the taxable
 23 year in which such expense was in-
 24 curred but before the time prescribed
 25 by law for filing the return for such

1 taxable year (not including extensions
2 thereof), and

3 “(ii) for medical care which (but for
4 the fact that it was incurred before the es-
5 tablishment of the account) otherwise
6 meets the requirements of the preceding
7 subparagraphs.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to taxable years beginning after
10 the date of the enactment of this Act.

11 **SEC. 106. ADMINISTRATIVE ERROR CORRECTION BEFORE**
12 **DUE DATE OF RETURN.**

13 (a) IN GENERAL.—Paragraph (4) of section 223(e)
14 of the Internal Revenue Code of 1986, as amended and
15 redesignated by the preceding sections of this Act, is
16 amended by adding at the end the following new subpara-
17 graph:

18 “(D) EXCEPTION FOR ADMINISTRATIVE
19 ERRORS CORRECTED BEFORE DUE DATE OF RE-
20 TURN.—Subparagraph (A) shall not apply if
21 any payment or distribution is made to correct
22 an administrative, clerical, or payroll contribu-
23 tion error and if—

24 “(i) such distribution is received by
25 the individual on or before the last day

1 prescribed by law (including extensions of
 2 time) for filing such individual's return for
 3 such taxable year, and

4 “(ii) such distribution is accompanied
 5 by the amount of net income attributable
 6 to such contribution.

7 Any net income described in clause (ii) shall be
 8 included in the gross income of the individual
 9 for the taxable year in which it is received.”.

10 (b) EFFECTIVE DATE.—The amendment made by
 11 this section shall take effect on the date of the enactment
 12 of this Act.

13 **SEC. 107. ALLOWING HSA ROLLOVER TO CHILD OR PARENT**
 14 **OF ACCOUNT HOLDER.**

15 (a) IN GENERAL.—Paragraph (8)(A) of section
 16 223(e) of the Internal Revenue Code of 1986, as redesign-
 17 nated by the preceding sections of this Act, is amended—

18 (1) by inserting “, child, parent, or grand-
 19 parent” after “surviving spouse”,

20 (2) by inserting “, child, parent, or grand-
 21 parent, as the case may be,” after “the spouse”,

22 (3) by inserting “, CHILD, PARENT, OR GRAND-
 23 PARENT” after “SPOUSE” in the heading thereof,
 24 and

1 (4) by adding at the end the following: “In the
 2 case of a child who acquires such beneficiary’s inter-
 3 est and with respect to whom a deduction under sec-
 4 tion 151 is allowable to another taxpayer for a tax-
 5 able year beginning in the calendar year in which
 6 such individual’s taxable year begins, such health
 7 savings account shall be treated as a health savings
 8 account of such child.”.

9 (b) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to taxable years beginning after
 11 the date of the enactment of this Act.

12 **SEC. 108. COVERAGE FOR AMOUNTS PAID FOR VITAMINS,**
 13 **DIETARY SUPPLEMENTS, GYM MEMBER-**
 14 **SHIPS, AND WEARABLE FITNESS TRACKERS.**

15 (a) IN GENERAL.—Paragraph (2) of section 223(c)
 16 of the Internal Revenue Code of 1986, as amended by the
 17 preceding provisions of this Act, is amended—

18 (1) in subparagraph (A), by inserting “, quali-
 19 fied wellness expenses,” after “menstrual care prod-
 20 ucts”, and

21 (2) by adding at the end the following:

22 “(C) QUALIFIED WELLNESS EXPENSES.—
 23 For purposes of this paragraph, the term
 24 ‘qualified wellness expenses’ means amounts
 25 paid for—

1 “(i) vitamins,

2 “(ii) dietary supplements (as defined
3 in section 201(ff) of the Federal Food,
4 Drug, and Cosmetic Act (21 U.S.C.
5 321(ff))),

6 “(iii) membership at a gym or fitness
7 facility, or

8 “(iv) wearable fitness trackers.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 the date of the enactment of this Act.

12 **SEC. 109. EQUIVALENT BANKRUPTCY PROTECTIONS FOR**
13 **HEALTH SAVINGS ACCOUNTS AS RETIRE-**
14 **MENT FUNDS.**

15 (a) IN GENERAL.—Section 522 of title 11, United
16 States Code, is amended by adding at the end the fol-
17 lowing new subsection:

18 “(r) TREATMENT OF HEALTH SAVINGS AC-
19 COUNTS.—For purposes of this section, any health savings
20 account (as described in section 223 of the Internal Rev-
21 enue Code of 1986) shall be treated in the same manner
22 as an individual retirement account described in section
23 408 of such Code.”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 this section shall apply to cases commencing under title

1 11, United States Code, after the date of the enactment
 2 of this Act.

3 **TITLE II—HEALTH** 4 **MARKETPLACE FOR ALL**

5 **SEC. 201. SHORT TITLE.**

6 This title may be cited as the “Health Marketplace
 7 for All Act of 2025”.

8 **SEC. 202. HEALTH MARKETPLACE POOLS DEEMED AN “EM-** 9 **PLOYER” FOR PURPOSES OF OFFERING** 10 **GROUP HEALTH PLANS OR GROUP HEALTH** 11 **INSURANCE COVERAGE.**

12 (a) DEFINITION OF EMPLOYER.—Section 3(5) of the
 13 Employee Retirement Income Security Act of 1974 (29
 14 U.S.C. 1002(5)) is amended by adding at the end the fol-
 15 lowing: “Such term shall be deemed to include, for pur-
 16 poses of offering a group health plan (as defined in section
 17 733(a)(1)) or group health insurance coverage (as defined
 18 in section 733(b)(4)) (which, notwithstanding any other
 19 provision of law, may include such a plan or coverage cov-
 20 ering prescription or nonprescription drugs as the only
 21 benefit offered by the plan or coverage in accordance with
 22 section 736(b)(5)(B)), any entity that meets the require-
 23 ments under section 736(b).”.

24 (b) GROUP HEALTH PLANS AND GROUP HEALTH IN-
 25 SURANCE COVERAGE.—Part 7 of subtitle B of title I of

1 the Employee Retirement Income Security Act of 1974
 2 (29 U.S.C. 1181 et seq.) is amended by adding at the end
 3 the following:

4 **“SEC. 736. HEALTH MARKETPLACE POOLS DEEMED AN ‘EM-**
 5 **PLOYER’ FOR PURPOSES OF OFFERING**
 6 **GROUP HEALTH PLANS OR GROUP HEALTH**
 7 **INSURANCE COVERAGE.**

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

17 “(b) REQUIREMENTS FOR HEALTH MARKETPLACE
 18 POOLS.—The requirements under this subsection are each
 19 of the following:

20 “(1) ORGANIZATION.—The health marketplace
 21 pool shall—

22 “(A) be formed and maintained in good
 23 faith for a purpose that includes the formation
 24 of a risk pool in order to offer group health in-

1 surance coverage or a group health plan to its
2 members; and

3 “(B) not condition membership in the
4 health marketplace pool on any health status-
5 related factor relating to an individual (includ-
6 ing an employee of an employer or a dependent
7 of an employee).

8 “(2) OFFERING GROUP HEALTH PLANS AND
9 GROUP HEALTH INSURANCE COVERAGE.—

10 “(A) DIFFERENT GROUPS.—

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

21 “(I) are established by the health
22 marketplace pool, or a health insur-
23 ance issuer contracting with such
24 health marketplace pool, on a policy
25 or product specific basis; and

1 “(II) subject to sections 701 and
 2 702, may vary for individuals covered
 3 through the health marketplace pool.

4 “(ii) PERMISSIBLE COVERAGE FOR
 5 DEPENDENTS.—Such group health plan or
 6 group health insurance coverage may be
 7 made available under clause (i) to any de-
 8 pendents of members of the health market-
 9 place pool or dependents of employees of
 10 employers that are such members.

11 “(B) NONDISCRIMINATION IN COVERAGE
 12 OFFERED.—

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

21 “(ii) CONSTRUCTION.—Nothing in
 22 this subsection shall be construed as re-
 23 quiring a health insurance issuer or group
 24 health plan to provide coverage outside the
 25 service area of the issuer or plan, or pre-

1 venting a health insurance issuer or group
 2 health plan from underwriting or from ex-
 3 cluding or limiting the coverage on any in-
 4 dividual, subject to the requirements under
 5 sections 701 and 702.

6 “(C) ASSUMPTION OF RISK.—The health
 7 marketplace pool may provide—

8 “(i) group health insurance coverage
 9 through a contract with a health insurance
 10 issuer; or

11 “(ii) a group health plan through self-
 12 insurance.

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

19 “(4) PROVISION OF ADMINISTRATIVE SERVICES
 20 TO PURCHASERS.—The health marketplace pool may
 21 provide administrative services for members. Such
 22 services may include accounting, billing, and enroll-
 23 ment information.

1 “(5) DRUG COVERAGE.—The group health plan
2 or group health insurance coverage offered by the
3 health marketplace pool may offer—

4 “(A) drug coverage, including coverage of
5 over-the-counter drugs, in combination with
6 other benefits covered by the group health plan
7 or group health insurance coverage; or

8 “(B) notwithstanding any other provision
9 of law, drug coverage, including coverage of
10 over-the-counter drugs, as the only benefit cov-
11 ered by the group health plan or group health
12 insurance coverage.

13 “(6) MEMBERS.—

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

17 “(i) the individual may enroll for cov-
18 erage under the group health plan or
19 group health insurance coverage offered by
20 the health marketplace pool (including, if
21 applicable, enrollment for coverage for a
22 dependent of such individual); or

23 “(ii) the employer of the individual
24 may enroll the individual for coverage
25 under the group health plan or group

1 health insurance coverage offered by the
2 health marketplace pool (including, if ap-
3 plicable, enrollment for coverage for a de-
4 pendent of such individual).

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

8 “(i) a member of an entity that estab-
9 lishes or joins the health marketplace pool
10 (or a dependent of such a member, as ap-
11 plicable);

12 “(ii) an employee of a member of an
13 entity described in clause (i) (or a depend-
14 ent of such an employee, as applicable); or

15 “(iii) an employee of an entity (or a
16 dependant of such an employee, as applica-
17 ble) controlled by a member of an entity
18 described in clause (i).

19 “(C) RULES FOR ENROLLMENT.—Nothing
20 in this paragraph shall preclude the health mar-
21 ketplace pool from establishing rules of enroll-
22 ment and reenrollment of members. Such rules
23 shall be applied consistently to all members
24 within the health marketplace pool and shall
25 not be based in any manner on health status-

1 related factors in accordance with sections 701
2 and 702.

3 “(c) DETERMINATION OF EMPLOYER AND JOINT EM-
4 PLOYER STATUS.—Participating in or facilitating a group
5 health plan or group health insurance coverage under this
6 section shall not be construed as establishing under any
7 Federal or State law—

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

11 “(2) a joint employer relationship for any pur-
12 pose.

13 “(d) DEFINITION.—In this section, the term ‘depend-
14 ent’, as applied to a group health plan or group health
15 insurance coverage offered in a State, shall have the mean-
16 ing applied to such term with respect to such plan or cov-
17 erage under the State law applying to such plan or cov-
18 erage. Such term may include the spouse and children of
19 the individual involved in accordance with such State
20 law.”.

21 **SEC. 203. CONFORMING AMENDMENTS.**

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

24 (1) in paragraph (6), by inserting before the pe-
25 riod “, except (with respect to an entity meeting the

1 requirements under section 736(b)) such term in-
 2 cludes any member of such entity”;

3 (2) in paragraph (21)—

4 (A) in subparagraph (A), by striking “sub-
 5 paragraph (B)” and inserting “subparagraphs
 6 (B) and (C)”;

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

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

21 (3) in paragraph (40)(A)—

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

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

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

2 “(iv) as a group health plan (as defined in sec-
3 tion 733(a)(1)), or group health insurance coverage
4 (as defined in section 733(b)(4)), offered by an enti-
5 ty meeting the requirements under section 736(b)
6 (which, notwithstanding any other provision of law,
7 may include such an entity offering such a plan or
8 coverage covering prescription or nonprescription
9 drugs as the only benefit offered by the plan or cov-
10 erage).”.

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