

AMENDMENT**OFFERED BY MRS. SPARTZ OF INDIANA**

Strike section 101 and insert the following new section:

**1 SEC. 101. 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

1 (29 U.S.C. 1181 et seq.) is amended by adding at the end
2 the following:

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

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

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

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

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

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

6 “(2) OFFERING GROUP HEALTH PLANS AND
7 GROUP HEALTH INSURANCE COVERAGE.—

8 “(A) DIFFERENT GROUPS.—

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

19 “(I) are established by the health
20 marketplace pool, or a health insur-
21 ance issuer contracting with such
22 health marketplace pool, on a policy
23 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 (c) CONFORMING AMENDMENTS.—Section 3 of the
22 Employee Retirement Income Security Act of 1974 (29
23 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).”.

