

AMENDMENT NO. 1 Calendar No. \_\_\_\_\_

Purpose: To deem an association health pool as an employer under the Employee Retirement Income Security Act of 1974 for purposes of offering a group health plan or group health insurance coverage.

**IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.**

**S. 1895**

To lower health care costs.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. PAUL

Viz:

1 At the appropriate place insert the following:

2 **SEC. \_\_\_\_ . ASSOCIATION HEALTH POOLS DEEMED AN “EM-**  
3 **PLOYER” FOR PURPOSES OF OFFERING**  
4 **GROUP HEALTH PLANS OR GROUP HEALTH**  
5 **INSURANCE COVERAGE.**

6 (a) DEFINITION OF EMPLOYER.—Section 3(5) of the  
7 Employee Retirement Income Security Act of 1974 (29  
8 U.S.C. 1002(5)) is amended by adding at the end the fol-  
9 lowing: “Such term shall be deemed to include, for pur-  
10 poses of offering a group health plan (as defined in section  
11 733(a)(1)) or group health insurance coverage (as defined



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

3           “(B) not condition membership in the as-  
4           sociation health pool on any health status-re-  
5           lated factor relating to an individual (including  
6           an employee of an employer or a dependent of  
7           an employee).

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

10           “(A) DIFFERENT GROUPS.—The associa-  
11           tion health pool, which may be in conjunction  
12           with a health insurance issuer that offers group  
13           health insurance coverage through the associa-  
14           tion health pool, shall make available a group  
15           health plan or group health insurance coverage  
16           to all members of the association health pool  
17           and (if applicable) any dependents of such  
18           members (and, in the case of members that are  
19           employers, employees of the employers and (if  
20           applicable) their dependents) at rates that are  
21           established by the association health pool, or a  
22           health insurance issuer contracting with such  
23           association health pool, on a policy or product  
24           specific basis and that, subject to sections 701

1 and 702, may vary for individuals covered  
2 through the association health pool.

3 “(B) NONDISCRIMINATION IN COVERAGE  
4 OFFERED.—

5 “(i) IN GENERAL.—Subject to clause  
6 (ii), the association health pool may not  
7 offer coverage under a group health plan  
8 or group health insurance coverage to a  
9 member of the association health pool un-  
10 less the same coverage is offered to all  
11 such members of the association health  
12 pool.

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

23 “(C) ASSUMPTION OF RISK.—The associa-  
24 tion health pool may provide—

1                   “(i) group health insurance coverage  
2                   through a contract with a health insurance  
3                   issuer; or

4                   “(ii) a group health plan through self-  
5                   insurance.

6                   “(3) GEOGRAPHIC AREAS.—Nothing in this  
7                   subsection shall be construed as preventing the es-  
8                   tablishment and operation of more than 1 associa-  
9                   tion health pool in a geographic area or as limiting  
10                  the number of association health pools that may op-  
11                  erate in any area.

12                  “(4) PROVISION OF ADMINISTRATIVE SERVICES  
13                  TO PURCHASERS.—The association health pool may  
14                  provide administrative services for members. Such  
15                  services may include accounting, billing, and enroll-  
16                  ment information.

17                  “(5) MEMBERS.—

18                  “(A) IN GENERAL.—With respect to an in-  
19                  dividual who is a member of an association  
20                  health pool—

21                  “(i) the individual may enroll for cov-  
22                  erage under a group health plan or group  
23                  health insurance coverage (including if ap-  
24                  plicable coverage for a dependent of such  
25                  individual); or

1                   “(ii) the employer of the individual  
2                   may enroll the individual for coverage  
3                   under a group health plan or group health  
4                   insurance coverage (including if applicable  
5                   coverage for a dependent of such indi-  
6                   vidual).

7                   “(B) RULES FOR ENROLLMENT.—Nothing  
8                   in this paragraph shall preclude an association  
9                   health pool from establishing rules of enroll-  
10                  ment and reenrollment of members. Such rules  
11                  shall be applied consistently to all members  
12                  within the association health pool and shall not  
13                  be based in any manner on health status-related  
14                  factors in accordance with sections 701 and  
15                  702.

16               “(c) DETERMINATION OF EMPLOYER AND JOINT EM-  
17               PLOYER STATUS.—Participating in or facilitating a group  
18               health plan or group health insurance coverage sponsored  
19               by a group or association of employers meeting the re-  
20               quirements under subsection (b) shall not be construed as  
21               establishing under any Federal or State law—

22                   “(1) an employer relationship for any purpose  
23                   other than offering the group health plan or group  
24                   health insurance coverage; and



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 an ‘association health pool’) that meets the re-  
4 quirements of subsection (b) of such section and offers a  
5 group health plan (as defined in section 733(a)(1)) or  
6 group health insurance coverage (as defined in section  
7 733(b)(4)), membership in the pool shall not by itself  
8 cause the person to be a fiduciary with respect to the  
9 group health plan or group health insurance coverage.”;  
10 and

11               (3) in paragraph (40)(A)—

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

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

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

17                       “(iv) as a group health plan (as defined in sec-  
18                       tion 733(a)(1)), or group health insurance coverage  
19                       (as defined in section 733(b)(4)), offered by an enti-  
20                       ty meeting the requirements under section 735(b).”.