



## Briefly on Benefits (November 2009)

November 3, 2009

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### Michelle's Law Compliance Date Looming

A new statute enacted October 9, 2008 which is effective for plan years beginning one year after the date of enactment (for example, January 1, 2010 for a calendar year plan) must allow certain dependents who otherwise would lose coverage to remain covered under the plan for up to an additional year. See Code § 9813 and ERISA § 714. This new law adds to the growing list of group health plan notices and potential extended coverage situations.

This statutory provision was named after Michelle Morse, who was a 20 year old full time student at Plymouth State University when she was diagnosed with colon cancer in December 2003. She declined medical advice to take a medical leave of absence from school because she did not want to lose coverage as a dependent under her mother's plan since she would then no longer be a full time student. The family could not afford the increase in premiums for COBRA coverage. Ms. Morse's plight inspired a state law in New Hampshire and then inspired the federal law.

Under the new law, a dependent child who is covered under a group health plan by reason of being a full time student in a post-secondary educational institution will be allowed to take a medically necessary leave of absence due to an illness or injury and remain covered under the plan until the earlier of one year after the leave of absence begins or the date coverage would otherwise terminate under the terms of the plan. A prerequisite to maintaining continued coverage is the plan's receipt of a medical certification from the covered dependent student's treating physician. Any notice sent to full time students asking them to certify their student status must also contain a description of the terms of continued coverage during a medically necessary leave of absence.

### Action Items

1. Amend your plans and summary plan descriptions to comply with Michelle's Law. The plan should be amended by the date Michelle's Law applies. ERISA allows notice of a material modification to be distributed within 210 days after the end of the plan year to which the material modification applies. This can be distributed as a summary of material modifications to the summary plan description.
2. Notwithstanding the maximum period allowed for distributing a summary of material modifications, consider notifying employees before or shortly after the effective date so that covered students who incur a medically necessary leave of absence from student status have notice of how to exercise their rights. Such notification is good for employee relations and could prevent a claim of fiduciary breach for failing to notify participants and beneficiaries of their ability to continue coverage under Michelle's Law.

3. Coordinate with your third party administrator or insurer to make sure that certifications of student status include a description of how to continue plan coverage during a medically necessary leave of absence from full time student status.
4. Adopt plan procedures to facilitate implementation of Michelle's Law.