

Employee Benefits Advisory: New Law Requires Continued Medical Coverage for Students on a Medical Leave of Absence

12/1/2008

President Bush signed into law "Michelle's Law"¹ on October 9, 2008. The new law ensures continuity of medical coverage under parents' plans for college students who take a medically necessary leave of absence from college.

Background

Michelle's Law was prompted by the case of Michelle Morse, a full-time college student who was diagnosed with colon cancer in 2003. Michelle was told that she would lose her medical coverage under her parents' health insurance plan if she reduced her course load while undergoing chemotherapy treatment, because she would no longer qualify as a dependent child under the plan. Michelle was forced to remain in school as a full-time student while undergoing 14 rounds of chemotherapy. In 2005, Michelle lost her battle with cancer.²

Summary of Michelle's Law

Michelle's Law amends the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code to prohibit a group health plan, or a health insurance issuer that provides health insurance coverage in connection with a group health plan, from terminating coverage of a dependent child due to a qualifying "medically necessary leave of absence" from, or other change in enrollment at, a postsecondary education institution prior to the *earlier* of

- the date that is one year after the first day of the medically necessary leave of absence; or
- the date on which such coverage would otherwise terminate under the terms of the plan.

In order to be a "medically necessary leave of absence," the student's leave must

- commence while the dependent child is suffering from a serious illness or injury;
- be medically necessary; and
- cause the dependent child to lose student status for purposes of coverage under the terms of the parents' plan or coverage.

A child is a "dependent child" under the law if he or she

- is a dependent child, under the terms of the plan or coverage, of a participant or beneficiary under the plan or coverage; and
- was enrolled in the plan or coverage, on the basis of being a student at a postsecondary educational institution, immediately before the first day of the medically necessary leave of absence.

Additional Features

A treating physician of the dependent child must certify to the plan or issuer of coverage that that the dependent child is suffering from a serious illness or injury and that the leave of absence (or other change of enrollment) described is medically necessary.

A plan or issuer must include a description of the Michelle's Law requirements as part of any notice regarding a requirement for certification of student status for coverage under the plan.

The dependent child must be entitled to the same benefits under the group health plan as if he or she had continued as an active student. If the dependent child's coverage changes (e.g., due to a change in health insurance coverage or health insurance issuer) the law shall apply to the changed coverage in the same manner as it would have applied to the previous coverage.

Interaction with COBRA

Michelle's Law does not address COBRA continuation coverage and has left many practitioners wondering how to apply COBRA during a student's "medically necessary leave of absence." Questions include:

Does the Michelle's Law period of coverage under a parent's plan count against the dependent student's COBRA entitlement?

What happens if the Michelle's Law physician certification is provided after the student's COBRA election period has ended? If the student has elected COBRA and paid the 102% premium, is he or she entitled to a rebate? If the student has not elected COBRA, is he or she entitled to reinstatement under the parent's plan?

What happens if a COBRA qualifying event (e.g., a parent's loss of coverage due to termination of employment) occurs during the Michelle's Law period? Is the student entitled to continued active participation under the parent's plan? Must the student elect COBRA in order to continue coverage?

It is anticipated that these and other issues will be addressed and clarified by the Departments of Labor, Treasury, and Health and Human Services, preferably in advance of the Michelle's Law effective date.

Effective Date

These amendments are effective with respect to plan years beginning on or after October 9, 2009, and to medically necessary leaves of absence beginning during such plans' years.

Endnotes

¹ Pub. L. 110-381.

² House of Representatives Committee Report 110-806, July 30, 2008.

If you have any questions concerning the information discussed in this advisory or any other employee benefits topic, please contact one of the attorneys listed below or your primary contact with the firm who can direct you to the right person. We would be delighted to work with you.

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