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Effective January 1, 2010, (for calendar year group health benefit plans), Michelle's Law will extend group health benefit plan coverage of a dependent child who loses full-time student status due to serious illness or injury for up to one year from the date the medically necessary leave of absence begins.

## Michelle's Law Extends Group Health Benefit Plan Eligibility for Dependent Students on a Medically Necessary Leave of Absence

By **Steven J. Friedman and Andrea R. Jackson**

Michelle's Law, a new law signed by President Bush on November 8, 2008, will extend eligibility for group health benefit plan coverage to a dependent child over the age of 18 who is enrolled in an institution of higher education but who would otherwise lose coverage under the group health benefit plan when a medically necessary leave of absence causes the dependent child to fall below full-time student status. The extension of eligibility is intended to protect group health benefit coverage of a sick or injured dependent child for up to one year.

The new law is effective January 1, 2010, for calendar year group health benefit plans that are subject to ERISA, the Internal Revenue Code and the Public Health Services Act.

Many group health benefit plans currently permit participation of a dependent child over the age of 18 only if that child is enrolled at an institution of higher education on a full-time basis. Michelle's Law would require such a group health benefit plan to extend coverage of a dependent child who loses full-time student status due to serious illness or injury.

There are two important definitions central to Michelle's Law. Dependent child means a *dependent child* of a plan participant who is enrolled under the terms of a group health benefit plan based on his or her student status and who was enrolled at a post-secondary educational institution immediately before the first day of the medically necessary leave of absence. *Medically necessary leave of absence* means a leave of absence: (1) of a dependent child from a post-secondary educational institution or any other change in enrollment that begins while the child is suffering from a serious illness or injury; (2) which is medically necessary; and (3) which causes the dependent child to lose student status under the terms of the group health benefit plan.

Michelle's Law establishes four important requirements with respect to the administration of this extended coverage in the case of medical necessity:

- *Doctor's Certification*: A doctor's written certification of the medical necessity of the leave of absence is required for continued participation in a group health benefit

plan. If the group health benefit plan does not receive written certification of the medical necessity of the leave, then the plan need not grant the continued coverage.

- *Coverage requirement:* Michelle's Law will prohibit a group health benefit plan from terminating coverage of a dependent child who is on a medically necessary leave of absence before the date that is the earlier of: (1) one year after the first day of the leave of absence; or (2) the date coverage would otherwise terminate (in the absence of the leave) under the terms of the group health benefit plan.
- *Continuity requirement:* A dependent child on a medically necessary leave of absence is entitled to receive the same group health benefit plan benefits as other dependents who are eligible and covered under the plan based on their student status. Further, any change in coverage under a group health benefit plan that occurs while a dependent child on a medically necessary leave of absence will be applicable to the remaining period of that leave without interruption.
- *Notice requirement:* A group health benefit plan will be required to include a notice of the terms of Michelle's Law along with any notice requiring certification of student status to plan participants. This notice must be written in clear terms that are easily understood.

While the new law is written in such a way that it provides continued coverage during a medically necessary leave of absence, there is no mention of interaction of Michelle's Law with COBRA. It is reasonable to interpret the law as an exception to eligibility requirements rather than continuation of group health benefit plan coverage similar to that required under COBRA. The practical effect of Michelle's Law is that the dependent child is considered eligible despite his or her student status. This eligibility permits coverage under a group health benefit plan without interruption for one full year from the date the medically necessary leave of absence begins. Once that year ends, the dependent child would become ineligible under the group health benefit plan providing a triggering event that, coupled with loss of coverage under the plan, would constitute a qualifying event under COBRA requiring an offer of COBRA continuation coverage to the dependent child.

Michelle's Law is another federal coverage mandate that plan sponsors must prepare for. The new law will apply to self-funded group health benefit plans subject to ERISA. While fully-insured group health benefit plans are exempt from the federal mandate, these plans may already be subject to similar state insurance law requirements. In either case, plan sponsors should review and revise as necessary their plan's current eligibility and coverage requirements that apply to dependent children with student status under applicable federal or state law. In addition, all group health benefit plan documents should be revised to include the terms and conditions of Michelle's Law, specifically, the plan's requirement for doctor certification and proof of student status. This information should be summarized in an easily understood notice explaining the terms of Michelle's Law and included with all group health benefit plan enrollment materials.

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