



SPECIAL Alert

In This Issue

In this tenth McGraw Wentworth Special Alert for 2008, we discuss the recently passed Michelle's Law. Michelle's Law requires health plans to extend coverage for one year if an adult child is seriously ill and cannot maintain full-time student status.

If a health plan requires an adult dependent child to be a full-time student to be eligible for health plan coverage and that student status can't be maintained due to a serious health condition, the plan must allow the student to continue on the plan for 12 months. The regulations contain very few specific details. This law will affect health plans on their first plan year following October 8, 2009. Hopefully, the government will release more guidance to help employers understand how to properly comply with this new law.

We welcome your comments and suggestions regarding this issue of our Special Alert. For more information on this article, please contact your Account Manager or visit the McGraw Wentworth web site at www.mcgrawwentworth.com.

“Michelle's Law”

On October 8, 2008, President Bush signed Michelle's Law, a law designed to allow college students to continue health plan coverage if they are diagnosed with a serious medical condition that prevents them from attending school full time.

The plight of Michelle Morris inspired this law. Michelle was a full-time college student diagnosed with colon cancer. Her doctors recommended that she quit school during chemotherapy because she needed to devote her energy to fighting the cancer. Although Michelle intended to quit school and focus on her health, she discovered that her health insurance would be canceled if she were no longer a full-time student.

Michelle would have had COBRA available, but she and her parents could not afford those premiums in addition to all her copays and deductible expenses. Michelle, therefore, was compelled to carry a full-time class load while undergoing chemotherapy. Unfortunately, Michelle did not survive her cancer battle, but her mother fought in her memory to help other college students who may be

forced to continue school to keep health insurance even though they are battling a serious illness or disability.

Michelle's Law says dependent students who take a medical leave of absence from school will not lose their health insurance coverage just because they are no longer full-time students. The law is surprisingly light on the specific details of the continuation coverage.

This Special Alert reviews:

- The continuation Requirement
- The definition of Medically Necessary Leave of Absence
- Employer Notice Requirements

Employers are hoping the government will release more details on how to properly administer Michelle's Law.



Continuation Requirement

Michelle's Law amends the Employee Retirement Income Security Act (ERISA) and the Public Health Service Act (PHSA). The law applies to both public and private entities. A few provisions also apply to individual insurance carriers.

Michelle's Law becomes effective on the first day of the first plan year following October 8, 2009. Employers must allow a dependent child continued access to their group health plan for **one year following the first day of a medically necessary leave of absence or the date on which the coverage would otherwise have ended.** For example, if coverage normally would be extended to the end of the month, the leave would apply from the end of the month.

This extended leave applies only if the dependent child will lose coverage under the health plan because he or she cannot continue a full-time schedule at a post-secondary educational institution, or college.

The law defines a dependent child as a child who is covered by a group health plan and:

1. Is a dependent child under the terms or conditions of the group health plan.
2. Was enrolled in a post-secondary educational institution the day before the first day of the medically necessary leave of absence.

The law does not apply to dependents the plan did not cover the day before the medically necessary leave of absence. It also does not require the health plan to cover a dependent child not previously covered.

Definition of Medically Necessary Leave of Absence

Unfortunately, the law fails to define a medically necessary leave of absence in depth. As a result, employers will be challenged to administer this coverage extension effectively.

The law merely requires that the leave:

- Begins when an adult dependent child is diagnosed with a serious illness or injury.
- Is medically necessary.
- Causes the child to lose full-time student status under the terms of the group health plan.



The law does allow the health plan or health insurer to ask the treating physician to verify in writing that the leave is indeed medically necessary. The law does not specify, however, the type of information the health plan may request or the actions a health plan can take if the physician certification is not provided.

Employer Notice Requirements

The law does include a notice requirement. When a group health plan or group insurance issuer notifies employees that they need to certify a student's full-time status for continued health coverage under the plan, the plan must also notify the employee that the student is entitled to a one year continuation period if the student needs

to take a medically necessary leave of absence from school.

This notice requirement seems to apply to the requests an employer or health plan would send to verify student status. Health plans commonly request proof the dependent is a full-time student at least once a year; some plans request proof each semester. Employers must include information on the leave in any notice regarding this require-

ment. Employers and health plans will also need to provide this leave information in any documents dealing with health plan eligibility, including open enrollment newsletters, new hire communications, any eligibility documents posted on the intranet and even in the Summary Plan Description.

Concluding Thoughts

Employers have time to amend their health plan's eligibility provisions to reflect this continuation requirement. However, your organization may want to wait for further clarifications from the Department of Labor. The government should clarify the following issues:

- **Cost of Coverage:** This law does not define who is responsible for paying for this coverage. Given the law's history, it is likely the cost will be the employer's responsibility. However, if your plan charges an employee contribution, can you continue to charge that contribution if a dependent adult child is on a

medically necessary leave of absence? The issue may be even more confusing for Michigan employers that charge the family continuation rate for adult dependent coverage. The family continuation additional cost rider is unique to the Southeast Michigan area. If your organization passes the full cost of the family continuation on to employees, can you continue to pass that cost along to employees if their dependent students are on a medically necessary leave of absence?

• **COBRA**

Interaction:

This law does not mention COBRA continuation rights. It seems to imply that a plan must continue to cover students for a year after they are diagnosed with a serious health condition that prevents them from attending school full time. It is assumed that COBRA would apply once the required one-year continuation requirement is satisfied. After a year, the dependent could elect COBRA coverage for up to 36 months. Thus this law seems to extend the health plan's liability for dependent children leaving school for medical reasons for up to four years (one year under Michelle's Law and three years under COBRA). However, this is not addressed at all in the text of the law.



- **Verifying the Medically Necessary Leave of Absence:** The law provides no details on how an employer can verify the leave is medical necessary. It does allow employers to ask the treating physician to verify the need in writing, but it provides no more detail than that simple statement. Also, the law provides no steps employers can take if they question the validity of the treating physician's assessment.
- **Timing of Request:** The law does not specify a time limit for students to request a

medically necessary leave of absence from school or for employees to notify employers their children are

no longer full-time students. COBRA requires 60 days' notice if a dependent loses eligibility under the health plan. If an employee fails to provide timely notice, COBRA rights may not apply. This law contains no reference to a time limit or penalties for failing to notify the plan promptly of a medically necessary leave of absence.

The intent of this law is a good one; it allows students battling a serious illness or injury to continue their health plan coverage even though they can no longer attend school full-time. However, many questions are left unanswered. Employers will need to modify their plans and procedures to comply with Michelle's Law, but it makes sense to wait un-

til the DOL issues clarifying guidance and compliance recommendations over the next year.

Please contact your McGraw Wentworth Account Director with any questions. **MW**

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