

Michelle's Law

October 14, 2008

On October 9, President Bush signed H.R. 2851, which is commonly known as "Michelle's Law." H.R. 2851 is named in memory of Michelle Morse, a Plymouth State University student who died of colon cancer in November 2005 at the age of 22. Michelle's Law ensures that dependents who receive health insurance coverage under a parent's health insurance plan due to their status as a full-time student at a postsecondary institution will not lose full-time student status as a result of a medically necessary leave of absence from school.

Who Is Covered

Michelle's Law protects a postsecondary student from losing full-time student status under an employer's medical coverage if the student is (i) a dependent child of a participant or beneficiary under the terms of the plan; and (ii) enrolled in a plan on the basis of being a student at a postsecondary educational institution immediately before the first day of a medically necessary leave of absence from school. A dependent covered under the law is entitled to the same benefits as if the dependent continued to be enrolled as a full-time student. The law also recognizes that changes in coverage (whether due to plan design or a subsequent open enrollment election) pass through to the dependent for the remainder of the medically necessary leave of absence.

What Is a Medically Necessary Leave of Absence

Under Michelle's Law, a medically necessary leave of absence occurs when a dependent, whose coverage is contingent upon maintaining full-time student status, starts a leave of absence from school that (i) commences while the dependent is suffering from a serious illness or injury; (ii) is medically necessary; and (iii) would ordinarily cause the dependent to lose full-time student status for purposes of coverage under the terms of the plan. Note that the dependent does not have to withdraw from the institution; merely reducing enrollment below the level required for full-time student status is also treated as a medically necessary leave of absence.

Michelle's Law requires that the plan treat such a dependent as a full-time student for one year after the first day of the medically necessary leave of absence or until the date on which such coverage would otherwise terminate under the terms of the plan (such as attaining a maximum age for full-time student coverage).

Action Steps for Group Medical Plans

- Michelle's Law only applies when a plan is supplied with a certification by a treating physician that verifies that (i) the dependent is suffering from a serious illness or injury, and (ii) the leave of absence is medically necessary. As a result, a plan should be prepared to make inquiries when a student's enrollment falls below full-time student course load requirement or perhaps to build information about Michelle's Law into cessation of coverage notices for dependents who were previously full-time students.
- All full-time student verification notices and other communication material such as summary plan descriptions (SPDs), must describe of the provisions of Michelle's Law.
- It is unclear whether employees who have dependents subject to Michelle's Law will have to treat the value of continued coverage as imputed income if the dependent does not satisfy the requirements for dependent status under Code section 152. This uncertainty is due to the failure of Michelle's Law to modify the definition of qualifying child or qualifying relative under the Code. Guidance on this point would be helpful for employers and employees.
- Finally, it is also unclear how Michelle's Law interacts with Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage and, specifically, whether the duration of COBRA coverage is measured from the date of the loss of full-time student status or the end of the extended coverage available through the new law.

Effective Date

Michelle's Law is effective for plan years beginning on or after October 9, 2009. For calendar year plans, this means that the effective date is January 1, 2010.

For more information on Michelle's Law, and to discuss next steps related its implementation, please contact one of the following Morgan Lewis attorneys:

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