

110TH CONGRESS
1ST SESSION

S. 400

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to ensure that dependent students who take a medically necessary leave of absence do not lose health insurance coverage, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 2007

Mr. SUNUNU (for himself, Mr. GREGG, and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to ensure that dependent students who take a medically necessary leave of absence do not lose health insurance coverage, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Michelle’s Law”.

1 **SEC. 2. COVERAGE OF DEPENDENT STUDENTS ON MEDI-**
 2 **CALLY NECESSARY LEAVE OF ABSENCE.**

3 (a) AMENDMENTS OF ERISA.—Subpart A of part 7
 4 of title I of the Employee Retirement Income Security Act
 5 of 1974 (29 U.S.C. 1181 et seq.) is amended by adding
 6 at the end the following:

7 **“SEC. 704. COVERAGE OF DEPENDENT STUDENTS ON MEDI-**
 8 **CALLY NECESSARY LEAVE OF ABSENCE.**

9 “(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—
 10 In this section, the term ‘medically necessary leave of ab-
 11 sence’ means a leave of absence from a postsecondary edu-
 12 cational institution (including an institution of higher edu-
 13 cation as defined in section 102 of the Higher Education
 14 Act of 1965) that—

15 “(1) is due to a severe illness or injury, as cer-
 16 tified by the attending physician of the dependent
 17 child involved; and

18 “(2) causes the dependent child involved to lose
 19 full-time student status.

20 **“(b) REQUIREMENT TO CONTINUE COVERAGE.—**

21 “(1) IN GENERAL.—In the case of a dependent
 22 child described under paragraph (2), a group health
 23 plan (or health insurance coverage offered in connec-
 24 tion with such a plan) shall not terminate coverage
 25 of such child due to a medically necessary leave of
 26 absence before the date that is the earlier of—

1 “(A) the date that is 1 year after the first
2 day of the medically necessary leave of absence;
3 or

4 “(B) the date on which such coverage
5 would otherwise terminate under the terms of
6 the plan.

7 “(2) CHILD DESCRIBED.—A dependent child
8 described in this paragraph is a child who—

9 “(A) is a dependent of a participant or
10 beneficiary of the plan or coverage;

11 “(B) is 18 years of age or older;

12 “(C) was enrolled in the plan or coverage
13 as of the first day of the medically necessary
14 leave of absence involved; and

15 “(D) was enrolled as a full-time student at
16 a postsecondary educational institution (as de-
17 scribed in subsection (a)) until the first day of
18 the medically necessary leave of absence in-
19 volved.

20 “(3) CERTIFICATION BY PHYSICIAN.—Para-
21 graph (1) shall not apply to a group health plan (or
22 health insurance coverage offered in connection with
23 such a plan) unless the dependent child submits to
24 the plan or issuer and the postsecondary educational
25 institution involved, documentation and certification

1 by the child’s attending physician stating that the
 2 leave of absence involved is a medically necessary
 3 leave of absence.

4 “(c) NO LOSS OF FULL-TIME STATUS DUE TO
 5 BREAK IN SEMESTER.—Any breaks in the school semester
 6 shall not disqualify a dependent child described under sub-
 7 section (b) from coverage under this section.

8 “(d) NO ADDITIONAL COVERAGE.—A dependent
 9 child described under subsection (b) shall be entitled to
 10 an extension under this section of only those benefits to
 11 which the child was entitled under the terms of the plan
 12 or coverage as of the first day of the medically necessary
 13 leave of absence involved.

14 “(e) COVERAGE UNDER SUCCESSOR PLAN.—If an
 15 employer or health insurance issuer changes group health
 16 plans after the first day of a medically necessary leave of
 17 absence of dependent child described in subsection (b) but
 18 before the date described under subsection (b)(1), and
 19 such new group health plan offers coverage of dependent
 20 children, such new group health plan shall be subject to
 21 this section in the same manner as the group health plan
 22 coverage in effect on the first day of the medically nec-
 23 essary leave of absence of such dependent child.

24 “(f) PRESUMPTION.—For purposes of administrative
 25 or judicial proceedings, there shall be a rebuttable pre-

1 sumption that the documentation and certification under
 2 subsection (b)(3) entitles the dependent child involved to
 3 coverage as described under this section.”.

4 (b) AMENDMENTS TO THE INTERNAL REVENUE
 5 CODE.—Subchapter B of chapter 100 of the Internal Rev-
 6 enue Code of 1986 (26 U.S.C. 9811 et seq.) is amended—

7 (1) in the table of sections, by inserting after
 8 the item relating to section 9812 the following new
 9 item:

“Sec. 9813. Coverage of dependent students on medically necessary leave of ab-
 sence.”;

10 and

11 (2) by inserting after section 9813 the fol-
 12 lowing:

13 **“SEC. 9813. COVERAGE OF DEPENDENT STUDENTS ON**
 14 **MEDICALLY NECESSARY LEAVE OF ABSENCE.**

15 “(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—
 16 The term ‘medically necessary leave of absence’ means a
 17 leave of absence from a postsecondary educational institu-
 18 tion (including an institution of higher education as de-
 19 fined in section 102 of the Higher Education Act of 1965)
 20 that—

21 “(1) is due to a severe illness or injury, as cer-
 22 tified by the attending physician of the dependent
 23 child involved; and

1 “(2) causes the dependent child involved to lose
2 full-time student status.

3 “(b) REQUIREMENT TO CONTINUE COVERAGE.—

4 “(1) IN GENERAL.—In the case of a dependent
5 child described under paragraph (2), a group health
6 plan (or health insurance coverage offered in connec-
7 tion with such a plan) shall not terminate coverage
8 of such child due to a medically necessary leave of
9 absence before the date that is the earlier of—

10 “(A) the date that is 1 year after the first
11 day of the medically necessary leave of absence;
12 or

13 “(B) the date on which such coverage
14 would otherwise terminate under the terms of
15 the plan.

16 “(2) CHILD DESCRIBED.—A dependent child
17 described in this paragraph is a child who—

18 “(A) is a dependent of a participant or
19 beneficiary of the plan or coverage;

20 “(B) is 18 years of age or older;

21 “(C) was enrolled in the plan or coverage
22 as of the first day of the medically necessary
23 leave of absence involved; and

24 “(D) was enrolled as a full-time student at
25 a postsecondary educational institution (as de-

1 scribed in subsection (a)) until the first day of
2 the medically necessary leave of absence in-
3 volved.

4 “(3) CERTIFICATION BY PHYSICIAN.—Para-
5 graph (1) shall not apply to a group health plan (or
6 health insurance coverage offered in connection with
7 such a plan) unless the dependent child submits to
8 the plan or issuer and the postsecondary educational
9 institution involved, documentation and certification
10 by the child’s attending physician stating that the
11 leave of absence involved is a medically necessary
12 leave of absence.

13 “(c) NO LOSS OF FULL-TIME STATUS DUE TO
14 BREAK IN SEMESTER.—Any breaks in the school semester
15 shall not disqualify a dependent child described under sub-
16 section (b) from coverage under this section.

17 “(d) NO ADDITIONAL COVERAGE.—A dependent
18 child described under subsection (b) shall be entitled to
19 an extension under this section of only those benefits to
20 which the child was entitled under the terms of the plan
21 or coverage as of the first day of the medically necessary
22 leave of absence involved.

23 “(e) COVERAGE UNDER SUCCESSOR PLAN.—If an
24 employer or health insurance issuer changes group health
25 plans after the first day of a medically necessary leave of

1 absence of dependent child described in subsection (b) but
2 before the date described under subsection (b)(1), and
3 such new group health plan offers coverage of dependent
4 children, such new group health plan shall be subject to
5 this section in the same manner as the group health plan
6 coverage in effect on the first day of the medically nec-
7 essary leave of absence of such dependent child.

8 “(f) PRESUMPTION.—For purposes of administrative
9 or judicial proceedings, there shall be a rebuttable pre-
10 sumption that the documentation and certification under
11 subsection (b)(3) entitles the dependent child involved to
12 coverage as described under this section.”.

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