

Public Law 110-381
110th Congress
An Act

To amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, 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.

Oct. 9, 2008
[H.R. 2851]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Michelle's Law.

SECTION 1. SHORT TITLE.

42 USC 201 note.

This Act may be cited as "Michelle's Law".

SEC. 2. COVERAGE OF DEPENDENT STUDENTS ON MEDICALLY NECESSARY LEAVE OF ABSENCE.

(a) AMENDMENTS OF ERISA.—

(1) IN GENERAL.—Subpart B of part 7 of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following:

"SEC. 714. COVERAGE OF DEPENDENT STUDENTS ON MEDICALLY NECESSARY LEAVE OF ABSENCE.

29 USC 1185c.

"(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—In this section, the term 'medically necessary leave of absence' means, with respect to a dependent child described in subsection (b)(2) in connection with a group health plan or health insurance coverage offered in connection with such plan, a leave of absence of such child from a postsecondary educational institution (including an institution of higher education as defined in section 102 of the Higher Education Act of 1965), or any other change in enrollment of such child at such an institution, that—

"(1) commences while such child is suffering from a serious illness or injury;

"(2) is medically necessary; and

"(3) causes such child to lose student status for purposes of coverage under the terms of the plan or coverage.

"(b) REQUIREMENT TO CONTINUE COVERAGE.—

"(1) IN GENERAL.—In the case of a dependent child described in paragraph (2), a group health plan, or a health insurance issuer that provides health insurance coverage in connection with a group health plan, shall not terminate coverage of such child under such plan or health insurance coverage due to a medically necessary leave of absence before the date that is the earlier of—

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

“(B) the date on which such coverage would otherwise terminate under the terms of the plan or health insurance coverage.

“(2) DEPENDENT CHILD DESCRIBED.—A dependent child described in this paragraph is, with respect to a group health plan or health insurance coverage offered in connection with the plan, a beneficiary under the plan who—

“(A) is a dependent child, under the terms of the plan or coverage, of a participant or beneficiary under the plan or coverage; and

“(B) was enrolled in the plan or coverage, on the basis of being a student at a postsecondary educational institution (as described in subsection (a)), immediately before the first day of the medically necessary leave of absence involved.

Applicability.

“(3) CERTIFICATION BY PHYSICIAN.—Paragraph (1) shall apply to a group health plan or health insurance coverage offered by an issuer in connection with such plan only if the plan or issuer of the coverage has received written certification by a treating physician of the dependent child which states that the child is suffering from a serious illness or injury and that the leave of absence (or other change of enrollment) described in subsection (a) is medically necessary.

“(c) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, shall include, with any notice regarding a requirement for certification of student status for coverage under the plan or coverage, a description of the terms of this section for continued coverage during medically necessary leaves of absence. Such description shall be in language which is understandable to the typical plan participant.

“(d) NO CHANGE IN BENEFITS.—A dependent child whose benefits are continued under this section shall be entitled to the same benefits as if (during the medically necessary leave of absence) the child continued to be a covered student at the institution of higher education and was not on a medically necessary leave of absence.

“(e) CONTINUED APPLICATION IN CASE OF CHANGED COVERAGE.—If—

“(1) a dependent child of a participant or beneficiary is in a period of coverage under a group health plan or health insurance coverage offered in connection with such a plan, pursuant to a medically necessary leave of absence of the child described in subsection (b);

“(2) the manner in which the participant or beneficiary is covered under the plan changes, whether through a change in health insurance coverage or health insurance issuer, a change between health insurance coverage and self-insured coverage, or otherwise; and

“(3) the coverage as so changed continues to provide coverage of beneficiaries as dependent children, this section shall apply to coverage of the child under the changed coverage for the remainder of the period of the medically necessary leave of absence of the dependent child under the plan in the same manner as it would have applied if the changed coverage had been the previous coverage.”.

(2) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 713 the following new item:

“Sec. 714. Coverage of dependent students on medically necessary leave of absence.”.

(b) AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.—

(1) GROUP MARKETS.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-4 et seq.) is amended by adding at the end the following new section:

“SEC. 2707. COVERAGE OF DEPENDENT STUDENTS ON MEDICALLY NECESSARY LEAVE OF ABSENCE. 42 USC 300gg-7.

“(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—In this section, the term ‘medically necessary leave of absence’ means, with respect to a dependent child described in subsection (b)(2) in connection with a group health plan or health insurance coverage offered in connection with such plan, a leave of absence of such child from a postsecondary educational institution (including an institution of higher education as defined in section 102 of the Higher Education Act of 1965), or any other change in enrollment of such child at such an institution, that—

“(1) commences while such child is suffering from a serious illness or injury;

“(2) is medically necessary; and

“(3) causes such child to lose student status for purposes of coverage under the terms of the plan or coverage.

(b) REQUIREMENT TO CONTINUE COVERAGE.—

(1) IN GENERAL.—In the case of a dependent child described in paragraph (2), a group health plan, or a health insurance issuer that provides health insurance coverage in connection with a group health plan, shall not terminate coverage of such child under such plan or health insurance coverage due to a medically necessary leave of absence before the date that is the earlier of—

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

“(B) the date on which such coverage would otherwise terminate under the terms of the plan or health insurance coverage.

(2) DEPENDENT CHILD DESCRIBED.—A dependent child described in this paragraph is, with respect to a group health plan or health insurance coverage offered in connection with the plan, a beneficiary under the plan who—

“(A) is a dependent child, under the terms of the plan or coverage, of a participant or beneficiary under the plan or coverage; and

“(B) was enrolled in the plan or coverage, on the basis of being a student at a postsecondary educational institution (as described in subsection (a)), immediately before the first day of the medically necessary leave of absence involved.

(3) CERTIFICATION BY PHYSICIAN.—Paragraph (1) shall apply to a group health plan or health insurance coverage offered by an issuer in connection with such plan only if the plan or issuer of the coverage has received written certification by a treating physician of the dependent child which states that the child is suffering from a serious illness or injury

Applicability.

and that the leave of absence (or other change of enrollment) described in subsection (a) is medically necessary.

“(c) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, shall include, with any notice regarding a requirement for certification of student status for coverage under the plan or coverage, a description of the terms of this section for continued coverage during medically necessary leaves of absence. Such description shall be in language which is understandable to the typical plan participant.

“(d) NO CHANGE IN BENEFITS.—A dependent child whose benefits are continued under this section shall be entitled to the same benefits as if (during the medically necessary leave of absence) the child continued to be a covered student at the institution of higher education and was not on a medically necessary leave of absence.

“(e) CONTINUED APPLICATION IN CASE OF CHANGED COVERAGE.—If—

“(1) a dependent child of a participant or beneficiary is in a period of coverage under a group health plan or health insurance coverage offered in connection with such a plan, pursuant to a medically necessary leave of absence of the child described in subsection (b);

“(2) the manner in which the participant or beneficiary is covered under the plan changes, whether through a change in health insurance coverage or health insurance issuer, a change between health insurance coverage and self-insured coverage, or otherwise; and

“(3) the coverage as so changed continues to provide coverage of beneficiaries as dependent children,

this section shall apply to coverage of the child under the changed coverage for the remainder of the period of the medically necessary leave of absence of the dependent child under the plan in the same manner as it would have applied if the changed coverage had been the previous coverage.”

“(2) INDIVIDUAL MARKET.—Subpart 3 of part B of title XXVII of such Act (42 U.S.C. 300gg-51 et seq.) is amended by adding at the end the following new section:

“SEC. 2753. COVERAGE OF DEPENDENT STUDENTS ON MEDICALLY NECESSARY LEAVE OF ABSENCE.

“The provisions of section 2707 shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.”

“(c) AMENDMENTS TO THE INTERNAL REVENUE CODE.—

“(1) IN GENERAL.—Subchapter B of chapter 100 of the Internal Revenue Code of 1986 (relating to other group health plan requirements) is amended by inserting after section 9812 the following new section:

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

“(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—In this section, the term ‘medically necessary leave of absence’ means, with respect to a dependent child described in subsection (b)(2) in connection with a group health plan, a leave of absence of such child

42 USC
300gg-54.

Applicability.

26 USC 9813.

from a postsecondary educational institution (including an institution of higher education as defined in section 102 of the Higher Education Act of 1965), or any other change in enrollment of such child at such an institution, that—

“(1) commences while such child is suffering from a serious illness or injury;

“(2) is medically necessary; and

“(3) causes such child to lose student status for purposes of coverage under the terms of the plan or coverage.

“(b) REQUIREMENT TO CONTINUE COVERAGE.—

“(1) IN GENERAL.—In the case of a dependent child described in paragraph (2), a group health plan shall not terminate coverage of such child under such plan due to a medically necessary leave of absence before the date that is the earlier of—

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

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

“(2) DEPENDENT CHILD DESCRIBED.—A dependent child described in this paragraph is, with respect to a group health plan, a beneficiary under the plan who—

“(A) is a dependent child, under the terms of the plan, of a participant or beneficiary under the plan; and

“(B) was enrolled in the plan, on the basis of being a student at a postsecondary educational institution (as described in subsection (a)), immediately before the first day of the medically necessary leave of absence involved.

“(3) CERTIFICATION BY PHYSICIAN.—Paragraph (1) shall apply to a group health plan only if the plan, or the issuer of health insurance coverage offered in connection with the plan, has received written certification by a treating physician of the dependent child which states that the child is suffering from a serious illness or injury and that the leave of absence (or other change of enrollment) described in subsection (a) is medically necessary.

“(c) NOTICE.—A group health plan shall include, with any notice regarding a requirement for certification of student status for coverage under the plan, a description of the terms of this section for continued coverage during medically necessary leaves of absence. Such description shall be in language which is understandable to the typical plan participant.

“(d) NO CHANGE IN BENEFITS.—A dependent child whose benefits are continued under this section shall be entitled to the same benefits as if (during the medically necessary leave of absence) the child continued to be a covered student at the institution of higher education and was not on a medically necessary leave of absence.

“(e) CONTINUED APPLICATION IN CASE OF CHANGED COVERAGE.—If—

“(1) a dependent child of a participant or beneficiary is in a period of coverage under a group health plan, pursuant to a medically necessary leave of absence of the child described in subsection (b);

“(2) the manner in which the participant or beneficiary is covered under the plan changes, whether through a change in health insurance coverage or health insurance issuer, a

Applicability.

change between health insurance coverage and self-insured coverage, or otherwise; and

“(3) the coverage as so changed continues to provide coverage of beneficiaries as dependent children, this section shall apply to coverage of the child under the changed coverage for the remainder of the period of the medically necessary leave of absence of the dependent child under the plan in the same manner as it would have applied if the changed coverage had been the previous coverage.”.

(2) CONFORMING AMENDMENT.—The table of sections for subchapter B of chapter 100 of such Code is amended by inserting after the item relating to section 9812 the following new item:

“Sec. 9813. Coverage of dependent students on medically necessary leave of absence.”.

26 USC 9813
note.

(d) EFFECTIVE DATE.—The amendments made by this Act shall apply with respect to plan years beginning on or after the date that is one year after the date of the enactment of this Act and to medically necessary leaves of absence beginning during such plan years.

Approved October 9, 2008.

LEGISLATIVE HISTORY—H.R. 2851:

HOUSE REPORTS: No. 110-806, Pt. 1 (Comm. on Energy and Commerce).

CONGRESSIONAL RECORD, Vol. 154 (2008):

July 30, considered and passed House.

Sept. 25, considered and passed Senate.

