

# Update

Feb. 11, 2009



## Law extends health benefits during student medical leaves

### Summary

Effective for plan years starting on or after Oct. 9, 2009, a new federal law requires almost all group health plans to extend dependent coverage when a college student otherwise would lose eligibility because of a medically necessary leave of absence. Under the new law, dependent coverage during student medical leave must continue for up to a year, unless the child's eligibility would end earlier for another reason. This *Update* summarizes the new law and its implications for employer-sponsored health coverage.

### How did the new law come about?

Group health plans typically end dependent eligibility for coverage once unmarried children reach a certain age, such as age 19. However, many plans allow full-time college or university students to retain dependent status longer, such as until age 23. Under a new federal law (Pub. L. No. [110-381](#)), virtually all group health plans that tie dependent coverage to student status will have to make exceptions for children who lose student eligibility because of a serious illness or injury.

Known as Michelle's Law, the new mandate commemorates Michelle Morse, a now-deceased college student who faced losing insurance if she cut her course load while fighting cancer. Under the law, health plans that provide dependent coverage to college students must extend coverage for up to one year if a child takes a medically necessary leave of absence from a postsecondary educational institution. Coverage may end earlier for another reason, such as the child exceeding the plan's dependent eligibility age.

### Which plans must comply with Michelle's law?

Michelle's Law applies to almost all insured and self-insured group health plans that cover dependents and use student status to determine eligibility. Covered plans include those sponsored by private employers, churches, and state or local governments (though certain state or local government-sponsored

self-insured plans can opt out of the law's requirements). The law does not apply to plans covering fewer than two current employees, so very small and retiree-only group health plans are exempt.

### **Who is eligible for extended coverage under Michelle's Law?**

Extended coverage is available to certain children covered under plans that use student status as one of their eligibility criteria. Plans can define who is a student and dependent child for coverage purposes.

**Medically necessary change in student status.** The extended coverage is available if a college student would otherwise lose coverage because a serious illness or injury requires a medically necessary leave of absence or a change in enrollment status (for example, a switch from full-time to part-time student status). A plan must receive written certification from the child's physician confirming the serious illness or injury and the medical necessity of the leave or change in status. The law does not specify when a plan must receive the certification, though regulators could develop deadlines.

**New disclosure required.** If a plan requires employees to certify a child's student status to verify eligibility for coverage, any notice about that requirement must describe students' right to extended coverage during medical leave and the timing of any physician certifications.

### **How long must extended coverage continue?**

Coverage must continue for up to one year of leave, unless dependent coverage ends earlier under another plan provision, such as the parent's termination of employment or the child's age exceeding the plan's limit.

**Example.** Jane, a full-time university student, has dependent coverage through her mother's employer, Providence Corp. Providence's self-insured group health plan usually ends dependent coverage at age 19, but full-time students at accredited postsecondary educational institutions can continue coverage until age 24. After turning 23 on Jan. 31, 2010, Jane is diagnosed with leukemia in March 2010. Starting April 1, 2010, she takes a 15-month leave from school to undergo chemotherapy. Her physician certifies that the leave is medically necessary and her leukemia is a serious illness. Even though Jane loses full-time student status and exceeds the dependent age limit for nonstudents, Providence's plan must continue her coverage until Jan. 31, 2011 – the date she turns 24 and exceeds the plan's dependent age limit for students. If the plan permitted students to continue coverage until age 25, Jane's coverage would have ended on April 1, 2011 – one year after her leave began.

**Coverage continues even if the plan changes.** Dependent coverage must continue during the leave as if the child had maintained student eligibility. This requirement applies even if a plan vendor changes during the extended period of coverage.

### **Who pays for extended coverage?**

The law doesn't address who – the employer or the covered employee – should pay for a child's extended coverage. However, regulators have not required employers to absorb extra costs under other federal mandates that are silent on the payment issue, such as laws requiring coverage of certain post-childbirth hospital stays or post-mastectomy benefits. A similar regulatory approach under Michelle's Law seems likely.

### **What steps should employers take to ensure compliance?**

If your group health plan doesn't offer dependent coverage or doesn't tie that coverage to student status, your plan doesn't need to change. If you have an insured plan that links dependent coverage to student status, you might already be in compliance if your state has a law similar to Michelle's Law. Otherwise, employers with insured or self-insured group health plans that offer dependent coverage tied to student status may want to consider several compliance steps:

- **Review eligibility terms in plan materials.** Update plan documents, summary plan descriptions and other plan materials that describe eligibility for benefits to reflect the new law's requirements. Make sure to review enrollment materials or other employee communications that may need revision, especially documents requesting certification of student status.
- **Evaluate cost and tax issues.** Because the law does not say who should pay for the extended coverage, regulators may have to clarify whether employers can pass the cost to parents or must continue coverage at the active dependent rates. In any event, you should continue to treat the coverage appropriately for income tax purposes. Many, but not all, dependents eligible for extended coverage qualify for tax-free health benefits under the federal tax code. For any dependent who doesn't qualify for tax-free health benefits, you must treat the full value of that dependent's coverage as taxable income to the employee, have the employee pay the full coverage cost on an after-tax basis or use a combination of these approaches.
- **Consider COBRA implications.** The new law doesn't specify how extended coverage affects a dependent's eligibility for COBRA. A student on medical leave won't lose group health plan coverage until the extended coverage period runs out or coverage is lost for other reasons. Thus, COBRA probably won't need to be offered until the dependent's coverage terminates, but employers may want to discuss this issue with legal counsel, pending guidance from federal regulators.



## For more information

For additional information, please contact your Mercer consultant.

*This **Update** is for information only and does not constitute legal advice; consult with legal and tax advisers before applying this information to your situation.*

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