

Michelle's Law: New Mandate on Dependent Student Eligibility



Donald Sims
Penny Plante, CEBS

On Oct. 9, 2008, a new federal law (P.L. 110-381) was enacted that provides for a continuation of dependent coverage for college students who would otherwise lose eligibility because of a reduction in their full-time class status or a medically necessary leave of absence from school itself. The law, named Michelle's Law in memory of Michelle Morse, applies to almost all insured and self-insured group health plans that cover dependents and use student status to determine eligibility. Examples of covered plans are private employers, church groups, and government entities (unless certain opt-out provisions are available).

HISTORY AND BACKGROUND

Michelle Morse was a college student in New Hampshire who was diagnosed with colon cancer. In light of the strenuous treatment schedule, she was advised by her doctors to take time off from school. However, when her parents were advised that COBRA would cost \$550 a month, an amount they could not afford, she continued to take a full-time course load in an effort to maintain her health insurance coverage. She passed away on Nov. 10, 2005.

Her mother, AnnMarie, took her daughter's case to the New Hampshire state legislature. With the assistance of some legislators and several medical groups, NH House Bill 37 was signed into state law on June 22, 2006, by Governor John Lynch. The federal law, patterned after the New Hampshire law, was introduced into the U.S. House of Representatives by New Hampshire Rep. Paul Hode on June 25, 2007.

WHAT IS THE IMPACT TO EMPLOYER HEALTH PLANS?

For plan years starting on or after Oct. 9, 2009, the new law prohibits a group health plan from terminating a college student's health coverage on the basis of the child taking a medically necessary leave of absence from school or changing to a part-time status. For plans on a calendar-year basis, this law becomes effective on Jan. 1, 2010.

The leave of absence or reduction in hours must be medically necessary and must commence while the eligible student is suffering from a serious illness or injury and would otherwise lose coverage under the plan.

Other requirements exist in order for this provision to apply. The student must have been enrolled in the group health plan before the

first day of the leave. There must also be a written certification by the student's physician indicating that the student is indeed suffering from a serious illness or injury that necessitates the leave or change in enrollment status.

The coverage under Michelle's Law must be extended for at least one year; however, coverage may end earlier for certain reasons, such as the student aging out of the plan (e.g., exceeding the plan's normal dependent-eligibility age).

Note that certain states are considering extending the mandatory age of dependent eligibility for students. If the age when a student would no longer be covered is increased, Michelle's Law would continue to apply for that minimum one year in those states.

There are also a number of states that have passed similar laws. One example is California. Effective Jan. 1, 2009, California's version of Michelle's law became effective for fully insured plans. Its provisions are not quite the same as the federal law in that it imposes timelines for providing documentation; the federal law leaves this requirement unstated.

Another aspect of the law is that group health plans must provide notice of the requirements of the law along with any notice regarding a requirement for certifying student status for coverage under the plan.

For plan years starting on or after Oct. 9, 2009, the new law prohibits a group health plan from terminating a college student's health coverage on the basis of the child taking a medically necessary leave of absence from school or changing to a part-time status. For plans on a calendar-year basis, this law becomes effective on Jan. 1, 2010.

The law does raise certain questions that as of today do not have answers. First, the law does not specifically indicate who is responsible for paying the cost of coverage extended via Michelle's Law. The legislation does not specifically indicate that the employer

is required to absorb additional costs (i.e., for premiums) because of the extension of coverage. Because there has been a limited push for employers to absorb the cost of coverage extended through other mandates (post-mastectomy benefits, for example), who will ultimately be required to shoulder the costs related to Michelle's Law remains unknown.

Also, the new law does not specifically describe how it will integrate with COBRA coverage. It is yet to be determined conclusively if Michelle's Law continuation coverage can be credited toward COBRA coverage.

Taking both questions into account can result in complex and difficult scenarios. For example, if the employer is to maintain the proportional cost of benefits for students who have their coverage extended under Michelle's Law, and the parents have a COBRA event, then would the student coverage be continued under a) a single employee where the employer and former employee are charged the relative contributions or b) under a family election where the employer subsidizes the cost of COBRA premiums by the amount it would have contributed under an active single employee? Would COBRA even be offered for the student until such time as the Michelle's Law extension would terminate?

Combining the two questions can produce certain scenarios that we suspect will have to be determined by legal counsel until federal guidelines are established.

SUGGESTED ACTION ITEMS

- review eligibility terms as illustrated in plan documents
- prepare notification language for release to employees
- prepare eligibility-requirement-criteria language for release to employees
- in light of little federal guidance (and potential establishment of precedents), have preliminary conversations regarding decisions with your health-plan advisors and legal counsel

For more information, contact Donald Sims (donald.sims@milliman.com, 813.282.9262), Penny Plante (penny.plante@milliman.com, 206.504.5592), or your local Milliman consultant.

The materials in this document represent the opinion of the authors and are not representative of the views of Milliman, Inc. Milliman does not certify the information, nor does it guarantee the accuracy and completeness of such information. Use of such information is voluntary and should not be relied upon unless an independent review of its accuracy and completeness has been performed. Materials may not be reproduced without the express consent of Milliman.

Copyright © 2009 Milliman, Inc.