

## **Eligibility for Continued Coverage for Dependent Students on Medically Necessary Leave of Absence (Michelle's Law)**

Effective with plan years beginning on or after October 9, 2009, Michelle's Law (Public Law 110-381) provides continued coverage under a group health plan for dependent children who are covered as full-time students, as defined by the plan, but lose their student status because they take a medically necessary leave of absence from school. This law applies to group health plans of at least two participants that offer dependent coverage and base the dependent eligibility on student status at a certain age. Group health plans that cover employees only or that cover dependents but do not require student status to maintain their eligibility are not subject to the provisions of Michelle's Law. Limited scope plans such as dental only or vision only that are offered separately from the group health plan, i.e. the plan requires a separate election and premium payment, may also be excluded from the requirements of Michelle's law.

Self-funded nonfederal government plans may choose to exempt themselves and opt out from Michelle's law by following the procedures established by the Centers for Medicare and Medicaid Services (CMS).

The law allows for a student who suffers from a serious illness or injury to take up to a one year medically necessary leave of absence and maintain coverage under the group health plan. This continued coverage applies if, immediately before the first day of the leave of absence, the student was covered under the plan and enrolled as a full-time student at a post-secondary educational institution (including community colleges, two- and four-year colleges, universities, vocational schools and schools outside the U.S.).

A "medically necessary leave of absence" means a leave of absence from a post-secondary educational institution OR any change in enrollment of the child at the institution that:

- a. begins while the child is suffering from a serious illness or injury,
- b. is medically necessary, and
- c. causes the child to lose student status for purposes of coverage under the terms of the group health plan.

The coverage provided to the dependent child during this period of continued coverage remains the same as if the child had continued to be covered as a full-time student and had not taken the medically necessary leave. This coverage will terminate on the earlier of one year from the date of the first day of leave OR the date coverage would otherwise terminate under the plan. For example, the child reaches the maximum age under the plan or coverage ends because of loss of employee/dependent eligibility. Upon this termination, COBRA continuation may be available according to the terms of the group health plan and the COBRA law. If during the leave, coverage under the

group health plan is amended, those changes will also apply to the dependent student on leave.

Before the medically necessary leave is granted, the dependent student's treating physician must provide written certification to the plan confirming the child is suffering from a serious illness or injury, the onset date of that serious illness or injury, and that the leave of absence (or other change of enrollment) is medically necessary. Unfortunately, the law provides no guidance regarding the meaning of what is "medically necessary" and what constitutes a "serious illness or injury". Note that Michelle's Law definition of what may be "medically necessary" may be different from the plan's definition of "medically necessary".

A notice detailing the coverage under Michelle's Law and the requirements for certification must be included anytime a request for student status is requested by the plan. Pro-Claim includes a copy of this notice when requesting verification of student status from the employee. For your reference, a sample notice is attached.

Failure to comply with Michelle's Law could trigger an excise tax of \$100 per day for each violation. Examples of violations would be the termination of coverage of a student based on the loss of student status when the reason for the loss of the student status is a serious illness or injury or the plan's failure to provide a Michelle's Law notice when required. In addition, affected parties may sue for damages under ERISA's civil enforcement provisions.