



New Law Requires Dependent Health Continuation During Medical Leave from College

President Bush has signed Michelle's Law, requiring group health plans (and insurers insuring group health plans) to continue dependent health coverage during a dependent's medically necessary leave of absence from post-secondary education that would otherwise cause the dependent to lose student status.

Background

Many group health plans continue dependent coverage after age 18 or 19 if the dependent is enrolled full-time in a college, university or other post-secondary educational institution. However, if the dependent is no longer enrolled in the educational institution, the dependent's coverage is generally terminated, with continued coverage available only through COBRA. Under most plans, the fact that the leave was due to a medical condition has not been taken into consideration for continued eligibility purposes.

Michelle's Law

In response to a situation in which a college student with cancer needed to take medical leave, but in so doing would lose health coverage because her family could not afford to pay the COBRA premiums, Congress has enacted [Michelle's Law](#). Under this law, which amends ERISA, the Public Health Service Act and the Internal Revenue Code, group health plans (and insurers insuring group health plans) will be required to continue dependent health coverage for a period of up to one year for the dependent's medical leave of absence from post-secondary education if the leave would otherwise cause the dependent to lose student status for purposes of coverage under the health plan.

Basic Requirements. To qualify under this law, the dependent must –

- be a dependent child under the terms of the plan and enrolled in the plan on the basis of being a student at a post-secondary educational institution immediately before the first day of the medical leave
- provide a written certification from his or her physician that the leave of absence from the educational institution is medically necessary.

If these requirements are met, the group health plan must continue the dependent's health coverage for a period of one year beginning on the first day of the medical leave of absence, or until coverage would otherwise terminate, if earlier. The benefits must be the same as if the dependent continued as a covered student under the plan.

BUCK COMMENT. *It is unclear how this law interacts with COBRA. If Congress intended the COBRA continuation period to commence at the end of the one-year period under this law, it did not so indicate. Clarifying guidance would be welcome.*

Notice Requirement. The law requires that the group health plan include notice of these continuation provisions in any notice that it provides explaining the eligibility certification requirements for dependents that are students at a post-secondary educational institution.

Effective Date. The law will go into effect for plan years beginning on or after October 9, 2009.

Conclusion

Michelle's Law will require changes to most health plans. Even though it will generally not be effective for the upcoming plan year, companies should begin preparing to implement it and communicate its provisions to employees for the following plan year.

Buck's consultants would be pleased to discuss this new law with you.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.