



New California Law Requires Continuation of Dependent Health Coverage During Medical Leave from School

Last year, Congress enacted Michelle's Law to require group health plans and insurers to continue dependent health coverage for college students who would otherwise lose eligibility because of a medically necessary leave from school. The federal law takes effect later this year. Last September, Governor Schwarzenegger signed into law California's version of Michelle's Law, which is now in effect for HMOs and other insured coverages purchased in California.

Background

Most group health plans set a "limiting age" for coverage of dependent children (generally age 18 or 19), after which they are no longer eligible for coverage. Many group health plans provide an exception to the limiting age and continue to provide coverage for full-time students enrolled in qualifying educational institutions. However, once the child is no longer enrolled full-time, his or her dependent coverage is generally terminated, with continued coverage available only through COBRA.

Just before the new federal [Michelle's Law](#) was enacted (See our October 15, 2009 [For Your Information](#)), California enacted a new law ([SB 1168](#)) that prohibits certain health plans and insurers from terminating dependent health coverage for full-time dependent students over age 18 during a break in the school calendar or a medically necessary leave of absence from a secondary or post-secondary school.

California Michelle's Law

California law prohibits certain health plans and insurance policies that provide dependent coverage from terminating coverage for a child who is physically or mentally incapable of self-sustaining employment and is chiefly dependent upon his or her parent for support and maintenance. California's new law retains this prohibition and amends the state's Health and Safety Code and Insurance Code to require continuation coverage for certain full-time students. Under the new law, certain health plans and insurance policies that cover a dependent child who is over age 18 and enrolled at either a secondary or post-secondary school must generally continue coverage for up to twelve months when the child takes a medically necessary leave of absence from school. Unlike the federal law, the new California law does not apply to self-funded plans.

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

- be a dependent child who is over age 18 and enrolled as a full-time student at a secondary or post-secondary educational institution immediately before the first day of the medical leave
- take a medical leave of absence from school due to an injury, illness or medical condition
- provide a written certification from his or her physician of the medical need for leave at least 30 days prior to a foreseeable leave or within 30 days after the start of an unforeseeable leave.

Now, the length of time dependent coverage must be continued largely depends on the circumstances surrounding the medically necessary leave. Continuation coverage continues to be unlimited as long as the dependent child is medically incapable of self-sustaining employment and is chiefly dependent on his or her parent for support and maintenance. However, in these circumstances, the plan or insurer may request information about a dependent child, but not more frequently than annually after the two-year period following the dependent's attainment of the limiting age.

Under the new law, a qualifying student's dependent coverage must also be continued when the leave is for a medical reason that does not render the dependent incapable of self-sustaining employment – but only for up to twelve months or until it would otherwise terminate under the plan (e.g. limiting age or marriage), if sooner. Continued coverage under this provision begins on the earlier of the first day of the medically necessary leave or the date of the physician's determination that the illness prevented the child from attending school. Importantly, any break in the school calendar (e.g., summer recess) will not disqualify the dependent child from coverage.

The student's benefits while on leave must be the same as those received as a dependent while in school. If the plan changes while the student is on leave – and the new plan provides dependent coverage – the student would be covered under the new plan for the remaining eligibility period.

BUCK COMMENT. *Whether the extension of dependent coverage under the state or federal law would offset, limit, or simply toll future state or federal COBRA rights is unclear. Clarifying guidance would be welcome.*

Notice Requirement. California law requires HMOs and insurers to provide notice to a covered employee with a dependent 90 days before the dependent reaches his or her limiting age under the plan or policy. A description of the new coverage continuation rights for a student's medical leave of absence must now be included in that notice, as well as in any notice confirming the student status of overage dependents (e.g., student certification notices).

BUCK COMMENT. *Given that this state law impacts dependent eligibility for benefits, ERISA disclosure rules likely require plan sponsors to include the new provision in SPDs even though the state law places responsibility for communicating these rules on the carrier.*

Effective Date. The law took effect January 1, 2009.

Conclusion

California's new law will require changes to those health plans and insurance policies subject to state law. Unlike its federal counterpart, the new law is now in effect. Thus, plan sponsors should review their plans and communication materials to ensure that they reflect any necessary changes.

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.