



Benefits Alert

Legal developments affecting employee benefits

A publication of Nixon Peabody LLP

OCTOBER 28, 2008

Michelle's Law and Continuation of Group Health Coverage For Certain Dependents

By Eric R. Paley and Steven Mindy

Many group health plans provide benefits to dependent children over the age of 18, but only while those children are enrolled as fulltime students. As a result, these same children may lose their coverage if they suffer a serious illness or injury that prevents them from attending classes.

Michelle's Law changes all that.

Named for a New Hampshire college student who died from cancer in 1985, Michelle's Law requires group health plans to continue coverage for a dependent child who would otherwise lose eligibility due to a medically necessary leave of absence. Specifically, plans may not terminate coverage for one year after a medically necessary leave of absence begins or, if earlier, the date coverage would otherwise end under the plan for all such dependents, regardless of student status.

For these purposes, a dependent child is a child of a plan participant or beneficiary who is covered by the plan due to his/her enrollment at a post-secondary educational institution and who is covered by the plan immediately before a serious illness or injury occurs.

A medically necessary leave of absence is a leave of absence from a post-secondary educational institution or other change in enrollment that: (1) begins while the child is suffering from a serious illness or injury; (2) is certified by a physician as being medically necessary; and (3) causes the child to lose student status for purposes of coverage under the plan. If the dependent child's treating physician does not provide written documentation that the child is suffering from a serious illness or injury and that the leave of absence is medically necessary, the plan need not provide continued coverage.

In addition to extending coverage, Michelle's Law creates a new notice requirement. If and when a plan requests certification of student status, it must include with that request a description of the requirements for continued coverage under the law. This description must be in language that the typical plan participant can understand.

What you need to do

Michelle's Law is effective for plan years that begin on or after October 9, 2009 (i.e., January 1, 2010, for calendar-year plans) and applies to medically necessary leaves of absence that begin during that plan year. Before the effective date, you should review your group health plan to determine if it provides coverage to dependent children enrolled at post-secondary educational institutions. If it does, you will need to amend to plan to comply with the new law. In addition, if you currently request or intend to request certification of student status once the law takes effect, you will need to modify that request to include the necessary description of the law's requirements for continued coverage.

For more information about Michelle's Law, please contact your regular Nixon Peabody attorney or:

- Brian Kopp at 585-263-1395 or bkopp@nixonpeabody.com
- Thomas J. McCord at 617-345-1337 or tmccord@nixonpeabody.com
- Eric R. Paley at 585-263-1012 or epaley@nixonpeabody.com
- Christian D. Hancey at 585-263-1147 or chancey@nixonpeabody.com