

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2851

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IN THE SENATE OF THE UNITED STATES

JULY 31, 2008

Received; read twice and referred to the Committee on Health, Education,  
Labor, and Pensions

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## AN ACT

To amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to ensure that dependent students who take a medically necessary leave of absence do not lose health insurance coverage, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “Michelle’s Law”.

5 **SEC. 2. COVERAGE OF DEPENDENT STUDENTS ON MEDI-**  
6 **CALLY NECESSARY LEAVE OF ABSENCE.**

7 (a) AMENDMENTS OF ERISA.—

8 (1) IN GENERAL.—Subpart B of part 7 of title  
9 I of the Employee Retirement Income Security Act  
10 of 1974 (29 U.S.C. 1185 et seq.) is amended by  
11 adding at the end the following:

12 **“SEC. 714. COVERAGE OF DEPENDENT STUDENTS ON MEDI-**  
13 **CALLY NECESSARY LEAVE OF ABSENCE.**

14 “(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—

15 In this section, the term ‘medically necessary leave of ab-

16 sence’ means, with respect to a dependent child described

17 in subsection (b)(2) in connection with a group health plan

18 or health insurance coverage offered in connection with

19 such plan, a leave of absence of such child from a postsec-

20 ondary educational institution (including an institution of

21 higher education as defined in section 102 of the Higher

22 Education Act of 1965), or any other change in enrollment

23 of such child at such an institution, that—

24 “(1) commences while such child is suffering

25 from a serious illness or injury;

1           “(2) is medically necessary; and

2           “(3) causes such child to lose student status for  
3 purposes of coverage under the terms of the plan or  
4 coverage.

5           “(b) REQUIREMENT TO CONTINUE COVERAGE.—

6           “(1) IN GENERAL.—In the case of a dependent  
7 child described in paragraph (2), a group health  
8 plan, or a health insurance issuer that provides  
9 health insurance coverage in connection with a group  
10 health plan, shall not terminate coverage of such  
11 child under such plan or health insurance coverage  
12 due to a medically necessary leave of absence before  
13 the date that is the earlier of—

14                   “(A) the date that is 1 year after the first  
15 day of the medically necessary leave of absence;  
16 or

17                   “(B) the date on which such coverage  
18 would otherwise terminate under the terms of  
19 the plan or health insurance coverage.

20           “(2) DEPENDENT CHILD DESCRIBED.—A de-  
21 pendent child described in this paragraph is, with re-  
22 spect to a group health plan or health insurance cov-  
23 erage offered in connection with the plan, a bene-  
24 ficiary under the plan who—

1           “(A) is a dependent child, under the terms  
2           of the plan or coverage, of a participant or ben-  
3           eficiary under the plan or coverage; and

4           “(B) was enrolled in the plan or coverage,  
5           on the basis of being a student at a postsec-  
6           ondary educational institution (as described in  
7           subsection (a)), immediately before the first day  
8           of the medically necessary leave of absence in-  
9           volved.

10          “(3) CERTIFICATION BY PHYSICIAN.—Para-  
11          graph (1) shall apply to a group health plan or  
12          health insurance coverage offered by an issuer in  
13          connection with such plan only if the plan or issuer  
14          of the coverage has received written certification by  
15          a treating physician of the dependent child which  
16          states that the child is suffering from a serious ill-  
17          ness or injury and that the leave of absence (or  
18          other change of enrollment) described in subsection  
19          (a) is medically necessary.

20          “(c) NOTICE.—A group health plan, and a health in-  
21          surance issuer providing health insurance coverage in con-  
22          nection with a group health plan, shall include, with any  
23          notice regarding a requirement for certification of student  
24          status for coverage under the plan or coverage, a descrip-  
25          tion of the terms of this section for continued coverage

1 during medically necessary leaves of absence. Such de-  
2 scription shall be in language which is understandable to  
3 the typical plan participant.

4 “(d) NO CHANGE IN BENEFITS.—A dependent child  
5 whose benefits are continued under this section shall be  
6 entitled to the same benefits as if (during the medically  
7 necessary leave of absence) the child continued to be a  
8 covered student at the institution of higher education and  
9 was not on a medically necessary leave of absence.

10 “(e) CONTINUED APPLICATION IN CASE OF  
11 CHANGED COVERAGE.—If—

12 “(1) a dependent child of a participant or bene-  
13 ficiary is in a period of coverage under a group  
14 health plan or health insurance coverage offered in  
15 connection with such a plan, pursuant to a medically  
16 necessary leave of absence of the child described in  
17 subsection (b);

18 “(2) the manner in which the participant or  
19 beneficiary is covered under the plan changes,  
20 whether through a change in health insurance cov-  
21 erage or health insurance issuer, a change between  
22 health insurance coverage and self-insured coverage,  
23 or otherwise; and

1           “(3) the coverage as so changed continues to  
 2           provide coverage of beneficiaries as dependent chil-  
 3           dren,  
 4 this section shall apply to coverage of the child under the  
 5 changed coverage for the remainder of the period of the  
 6 medically necessary leave of absence of the dependent  
 7 child under the plan in the same manner as it would have  
 8 applied if the changed coverage had been the previous cov-  
 9 erage.”.

10           (2) CONFORMING AMENDMENT.—The table of  
 11           contents in section 1 of such Act is amended by in-  
 12           serting after the item relating to section 713 the fol-  
 13           lowing new item:

“Sec. 714. Coverage of dependent students on medically necessary leave of ab-  
 sence.”.

14           (b) AMENDMENTS TO THE PUBLIC HEALTH SERVICE  
 15 ACT.—

16           (1) GROUP MARKETS.—Subpart 2 of part A of  
 17           title XXVII of the Public Health Service Act (42  
 18           U.S.C. 300gg–4 et seq.) is amended by adding at  
 19           the end the following new section:

20           **“SEC. 2707. COVERAGE OF DEPENDENT STUDENTS ON**  
 21           **MEDICALLY NECESSARY LEAVE OF ABSENCE.**

22           “(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—  
 23 In this section, the term ‘medically necessary leave of ab-  
 24 sence’ means, with respect to a dependent child described

1 in subsection (b)(2) in connection with a group health plan  
2 or health insurance coverage offered in connection with  
3 such plan, a leave of absence of such child from a postsec-  
4 ondary educational institution (including an institution of  
5 higher education as defined in section 102 of the Higher  
6 Education Act of 1965), or any other change in enrollment  
7 of such child at such an institution, that—

8           “(1) commences while such child is suffering  
9           from a serious illness or injury;

10           “(2) is medically necessary; and

11           “(3) causes such child to lose student status for  
12           purposes of coverage under the terms of the plan or  
13           coverage.

14           “(b) REQUIREMENT TO CONTINUE COVERAGE.—

15           “(1) IN GENERAL.—In the case of a dependent  
16           child described in paragraph (2), a group health  
17           plan, or a health insurance issuer that provides  
18           health insurance coverage in connection with a group  
19           health plan, shall not terminate coverage of such  
20           child under such plan or health insurance coverage  
21           due to a medically necessary leave of absence before  
22           the date that is the earlier of—

23                   “(A) the date that is 1 year after the first  
24                   day of the medically necessary leave of absence;

25                   or

1           “(B) the date on which such coverage  
2           would otherwise terminate under the terms of  
3           the plan or health insurance coverage.

4           “(2) DEPENDENT CHILD DESCRIBED.—A de-  
5           pendent child described in this paragraph is, with re-  
6           spect to a group health plan or health insurance cov-  
7           erage offered in connection with the plan, a bene-  
8           ficiary under the plan who—

9           “(A) is a dependent child, under the terms  
10          of the plan or coverage, of a participant or ben-  
11          eficiary under the plan or coverage; and

12          “(B) was enrolled in the plan or coverage,  
13          on the basis of being a student at a postsec-  
14          ondary educational institution (as described in  
15          subsection (a)), immediately before the first day  
16          of the medically necessary leave of absence in-  
17          volved.

18          “(3) CERTIFICATION BY PHYSICIAN.—Para-  
19          graph (1) shall apply to a group health plan or  
20          health insurance coverage offered by an issuer in  
21          connection with such plan only if the plan or issuer  
22          of the coverage has received written certification by  
23          a treating physician of the dependent child which  
24          states that the child is suffering from a serious ill-  
25          ness or injury and that the leave of absence (or

1 other change of enrollment) described in subsection  
2 (a) is medically necessary.

3 “(c) NOTICE.—A group health plan, and a health in-  
4 surance issuer providing health insurance coverage in con-  
5 nection with a group health plan, shall include, with any  
6 notice regarding a requirement for certification of student  
7 status for coverage under the plan or coverage, a descrip-  
8 tion of the terms of this section for continued coverage  
9 during medically necessary leaves of absence. Such de-  
10 scription shall be in language which is understandable to  
11 the typical plan participant.

12 “(d) NO CHANGE IN BENEFITS.—A dependent child  
13 whose benefits are continued under this section shall be  
14 entitled to the same benefits as if (during the medically  
15 necessary leave of absence) the child continued to be a  
16 covered student at the institution of higher education and  
17 was not on a medically necessary leave of absence.

18 “(e) CONTINUED APPLICATION IN CASE OF  
19 CHANGED COVERAGE.—If—

20 “(1) a dependent child of a participant or bene-  
21 ficiary is in a period of coverage under a group  
22 health plan or health insurance coverage offered in  
23 connection with such a plan, pursuant to a medically  
24 necessary leave of absence of the child described in  
25 subsection (b);

1           “(2) the manner in which the participant or  
2           beneficiary is covered under the plan changes,  
3           whether through a change in health insurance cov-  
4           erage or health insurance issuer, a change between  
5           health insurance coverage and self-insured coverage,  
6           or otherwise; and

7           “(3) the coverage as so changed continues to  
8           provide coverage of beneficiaries as dependent chil-  
9           dren,

10          this section shall apply to coverage of the child under the  
11          changed coverage for the remainder of the period of the  
12          medically necessary leave of absence of the dependent  
13          child under the plan in the same manner as it would have  
14          applied if the changed coverage had been the previous cov-  
15          erage.”.

16                 (2) INDIVIDUAL MARKET.—Subpart 3 of part B  
17                 of title XXVII of such Act (42 U.S.C. 300gg–51 et  
18                 seq.) is amended by adding at the end the following  
19                 new section:

20                 **“SEC. 2753. COVERAGE OF DEPENDENT STUDENTS ON**  
21                                 **MEDICALLY NECESSARY LEAVE OF ABSENCE.**

22                 “The provisions of section 2707 shall apply to health  
23                 insurance coverage offered by a health insurance issuer  
24                 in the individual market in the same manner as they apply  
25                 to health insurance coverage offered by a health insurance

1 issuer in connection with a group health plan in the small  
2 or large group market.”.

3 (c) AMENDMENTS TO THE INTERNAL REVENUE  
4 CODE.—

5 (1) IN GENERAL.—Subchapter B of chapter  
6 100 of the Internal Revenue Code of 1986 (relating  
7 to other group health plan requirements) is amended  
8 by inserting after section 9812 the following new  
9 section:

10 **“SEC. 9813. COVERAGE OF DEPENDENT STUDENTS ON**  
11 **MEDICALLY NECESSARY LEAVE OF ABSENCE.**

12 “(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—  
13 In this section, the term ‘medically necessary leave of ab-  
14 sence’ means, with respect to a dependent child described  
15 in subsection (b)(2) in connection with a group health  
16 plan, a leave of absence of such child from a postsecondary  
17 educational institution (including an institution of higher  
18 education as defined in section 102 of the Higher Edu-  
19 cation Act of 1965), or any other change in enrollment  
20 of such child at such an institution, that—

21 “(1) commences while such child is suffering  
22 from a serious illness or injury;

23 “(2) is medically necessary; and

1           “(3) causes such child to lose student status for  
2 purposes of coverage under the terms of the plan or  
3 coverage.

4           “(b) REQUIREMENT TO CONTINUE COVERAGE.—

5           “(1) IN GENERAL.—In the case of a dependent  
6 child described in paragraph (2), a group health  
7 plan shall not terminate coverage of such child  
8 under such plan due to a medically necessary leave  
9 of absence before the date that is the earlier of—

10           “(A) the date that is 1 year after the first  
11 day of the medically necessary leave of absence;  
12 or

13           “(B) the date on which such coverage  
14 would otherwise terminate under the terms of  
15 the plan.

16           “(2) DEPENDENT CHILD DESCRIBED.—A de-  
17 pendent child described in this paragraph is, with re-  
18 spect to a group health plan, a beneficiary under the  
19 plan who—

20           “(A) is a dependent child, under the terms  
21 of the plan, of a participant or beneficiary  
22 under the plan; and

23           “(B) was enrolled in the plan, on the basis  
24 of being a student at a postsecondary edu-  
25 cational institution (as described in subsection

1 (a)), immediately before the first day of the  
2 medically necessary leave of absence involved.

3 “(3) CERTIFICATION BY PHYSICIAN.—Para-  
4 graph (1) shall apply to a group health plan only if  
5 the plan, or the issuer of health insurance coverage  
6 offered in connection with the plan, has received  
7 written certification by a treating physician of the  
8 dependent child which states that the child is suf-  
9 fering from a serious illness or injury and that the  
10 leave of absence (or other change of enrollment) de-  
11 scribed in subsection (a) is medically necessary.

12 “(c) NOTICE.—A group health plan shall include,  
13 with any notice regarding a requirement for certification  
14 of student status for coverage under the plan, a descrip-  
15 tion of the terms of this section for continued coverage  
16 during medically necessary leaves of absence. Such de-  
17 scription shall be in language which is understandable to  
18 the typical plan participant.

19 “(d) NO CHANGE IN BENEFITS.—A dependent child  
20 whose benefits are continued under this section shall be  
21 entitled to the same benefits as if (during the medically  
22 necessary leave of absence) the child continued to be a  
23 covered student at the institution of higher education and  
24 was not on a medically necessary leave of absence.

1       “(e) CONTINUED APPLICATION IN CASE OF  
2 CHANGED COVERAGE.—If—

3               “(1) a dependent child of a participant or bene-  
4 ficiary is in a period of coverage under a group  
5 health plan, pursuant to a medically necessary leave  
6 of absence of the child described in subsection (b);

7               “(2) the manner in which the participant or  
8 beneficiary is covered under the plan changes,  
9 whether through a change in health insurance cov-  
10 erage or health insurance issuer, a change between  
11 health insurance coverage and self-insured coverage,  
12 or otherwise; and

13               “(3) the coverage as so changed continues to  
14 provide coverage of beneficiaries as dependent chil-  
15 dren,

16 this section shall apply to coverage of the child under the  
17 changed coverage for the remainder of the period of the  
18 medically necessary leave of absence of the dependent  
19 child under the plan in the same manner as it would have  
20 applied if the changed coverage had been the previous cov-  
21 erage.”.

22               (2) CONFORMING AMENDMENT.—The table of  
23 sections for subchapter B of chapter 100 of such  
24 Code is amended by inserting after the item relating  
25 to section 9812 the following new item:

“Sec. 9813. Coverage of dependent students on medically necessary leave of absence.”.

1       (d) **EFFECTIVE DATE.**—The amendments made by  
2 this Act shall apply with respect to plan years beginning  
3 on or after the date that is one year after the date of  
4 the enactment of this Act and to medically necessary  
5 leaves of absence beginning during such plan years.

Passed the House of Representatives July 30, 2008.

Attest:                   LORRAINE C. MILLER,  
*Clerk.*