

# Union Calendar No. 522

110TH CONGRESS  
2D SESSION

# H. R. 2851

**[Report No. 110–806, Part I]**

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.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2007

Mr. HODES (for himself, Mr. CASTLE, Ms. SHEA-PORTER, Mr. NADLER, Mrs. MCCARTHY of New York, Mr. DAVIS of Illinois, Ms. SUTTON, Mrs. BOYDA of Kansas, Mr. MCGOVERN, Mr. STARK, Ms. CASTOR, Ms. CLARKE, Mr. COHEN, Mr. JOHNSON of Georgia, Mrs. LOWEY, Mr. EDWARDS, Mr. EMANUEL, Ms. SOLIS, Ms. ZOE LOFGREN of California, Mr. LANTOS, Mr. SHERMAN, Mr. WU, Mr. LINCOLN DAVIS of Tennessee, Mr. KAGEN, Mr. LARSON of Connecticut, Mr. BERRY, Mr. McDERMOTT, Mrs. TAUSCHER, Ms. HARMAN, Mr. GUTIERREZ, Mr. SCOTT of Virginia, Ms. SCHAKOWSKY, Mr. MITCHELL, Mr. SARBANES, Ms. KAPTUR, Mr. GILCHREST, Mr. BARROW, Mr. McNULTY, Mr. WELCH of Vermont, Ms. SCHWARTZ, Mr. BRALEY of Iowa, Mr. ELLISON, Mr. REGULA, and Mr. BISHOP of New York) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JULY 30, 2008

Additional sponsors: Mr. HINOJOSA, Mr. PAYNE, Mr. WAXMAN, Mrs. CAPPS, Mr. ABERCROMBIE, Mr. BERMAN, Mrs. EMERSON, Mr. FRANK of Massachusetts, Mr. MOORE of Kansas, Mr. DINGELL, Mr. INSLEE, Mr. KENNEDY, Ms. DEGETTE, Mr. ACKERMAN, Mr. RAMSTAD, Ms. WOOLSEY, Ms. CARSON, Mr. MICHAUD, Mr. ISRAEL, Mr. GEORGE MILLER of California, Mr. ISSA, Mr. BUTTERFIELD, Mr. SERRANO, Mr. STUPAK, Ms. HERSETH SANDLIN, Mr. SPRATT, Ms. VELÁZQUEZ, Mr. OLVER, Mr.

WEINER, Mr. CROWLEY, Mr. MARKEY, Mr. PERLMUTTER, Ms. HIRONO, Ms. MCCOLLUM of Minnesota, Ms. LEE, Mr. PRICE of North Carolina, Mr. MARSHALL, Mr. TIERNEY, Mr. BLUMENAUER, Mr. DOYLE, Mr. ALTMIRE, Ms. BALDWIN, Mr. GORDON of Tennessee, Mr. ENGEL, Mr. WYNN, Mr. GENE GREEN of Texas, Mr. GONZALEZ, Mr. ROSS, Mr. HILL, Ms. BERKLEY, Mr. HINCHEY, Mr. CUELLAR, Mr. RUPPERSBERGER, Mr. FARR, Mr. DELAHUNT, Mr. HOLT, Mr. YARMUTH, Ms. MATSUI, Mr. ALLEN, Mr. RANGEL, Mr. EHLERS, Mr. MCHUGH, Mr. ETHERIDGE, Mr. CLAY, Mr. HARE, Mr. MORAN of Virginia, Mrs. DAVIS of California, Ms. LINDA T. SÁNCHEZ of California, Mr. PLATTS, Ms. JACKSON-LEE of Texas, Mr. CUMMINGS, Ms. MOORE of Wisconsin, Mr. GRIJALVA, Mr. COURTNEY, Mr. SHULER, Mr. KILDEE, Mr. HALL of New York, Mr. TOWNS, Mr. KUCINICH, Mr. MELANCON, Mr. LOEBSACK, Mr. BOUCHER, Mr. MATHESON, Mr. ARCURI, Ms. HOOLEY, Mr. SCHIFF, Mr. ELLSWORTH, Mr. CARSON, Mr. ROTHMAN, Mr. MURTHA, Mr. GINGREY, Mr. CONYERS, Mr. VAN HOLLEN, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. RODRIGUEZ, Mr. WALZ of Minnesota, Mr. SIRES, Ms. WATERS, Mr. CHILDERS, Mr. MCNERNEY, Mr. SPACE, Mr. PASCRELL, Ms. ROYBAL-ALLARD, Mr. SESTAK, Mr. WALDEN of Oregon, Mr. RYAN of Ohio, and Mr. LEWIS of Georgia

JULY 30, 2008

Reported from the Committee on Energy and Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

JULY 30, 2008

Committees on Education and Labor, and Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on June 25, 2007]

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## A BILL

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,*

1 **SECTION 1. SHORT TITLE.**

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

3 **SEC. 2. COVERAGE OF DEPENDENT STUDENTS ON MEDI-**  
4 **CALLY NECESSARY LEAVE OF ABSENCE.**

5 *(a) AMENDMENTS OF ERISA.—*

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

10 **“SEC. 714. COVERAGE OF DEPENDENT STUDENTS ON MEDI-**  
11 **CALLY 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), a leave of absence of such child from*  
16 *a postsecondary educational institution (including an in-*  
17 *stitution of higher education as defined in section 102 of*  
18 *the Higher Education Act of 1965), or any other change*  
19 *in enrollment of such child at such an institution, that—*

20 *“(1) commences while such child is suffering*  
21 *from a severe illness or injury;*

22 *“(2) is medically necessary; and*

23 *“(3) causes such child to lose full-time student*  
24 *status under the terms of the plan.*

25 *“(b) REQUIREMENT TO CONTINUE COVERAGE.—*

1           “(1) *IN GENERAL.*—*In the case of a dependent*  
2 *child described in paragraph (2), a group health plan*  
3 *(or health insurance coverage offered in connection*  
4 *with such a plan) shall not terminate coverage of such*  
5 *child due to a medically necessary leave of absence be-*  
6 *fore the date that is the earlier of—*

7                   “(A) *the date that is 1 year after the first*  
8 *day of the medically necessary leave of absence;*  
9 *or*

10                   “(B) *the date on which such coverage would*  
11 *otherwise terminate under the terms of the plan.*

12           “(2) *DEPENDENT CHILD DESCRIBED.*—*A de-*  
13 *pendent child described in this paragraph is a bene-*  
14 *ficiary under the plan who—*

15                   “(A) *is a dependent child, under the terms*  
16 *of the plan, of a participant or beneficiary of the*  
17 *plan;*

18                   “(B) *was enrolled in the plan or coverage as*  
19 *of the first day of the medically necessary leave*  
20 *of absence involved; and*

21                   “(C) *was enrolled as a full-time student at*  
22 *a postsecondary educational institution (as de-*  
23 *scribed in subsection (a)) until the first day of*  
24 *the medically necessary leave of absence involved.*

1           “(3) *CERTIFICATION BY PHYSICIAN.*—Paragraph  
2           (1) shall not apply to a group health plan (or health  
3           insurance coverage offered in connection with such a  
4           plan) unless certification by the child’s attending  
5           physician is submitted to the plan or issuer stating  
6           that the dependent child is suffering from a severe ill-  
7           ness or injury and that the leave of absence is medi-  
8           cally necessary.

9           “(c) *NO LOSS OF FULL-TIME STATUS DUE TO BREAK*  
10          *IN SEMESTER.*—Any breaks in the school semester shall not  
11          disqualify a dependent child described under subsection (b)  
12          from coverage under this section.

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

19          “(e) *COVERAGE UNDER SUCCESSOR PLAN.*—If a plan  
20          sponsor changes group health plans after the first day of  
21          a medically necessary leave of absence of dependent child  
22          described in subsection (b) but before the date described  
23          under subsection (b)(1), and such new group health plan  
24          offers coverage of beneficiaries as dependent children, such

1 *new group health plan shall be subject to this section in*  
 2 *the same manner as the predecessor group health plan.*

3       “(f) *PRESUMPTION.*—*For purposes of administrative*  
 4 *or judicial proceedings, upon certification under subsection*  
 5 *(b)(3), there shall be a rebuttable presumption that the re-*  
 6 *quirements of paragraphs (1) and (2) of subsection (a) have*  
 7 *been met.*”.

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

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

12       (b) *AMENDMENTS TO THE PUBLIC HEALTH SERVICE*  
 13 *ACT.*—

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

18       “**SEC. 2707. COVERAGE OF DEPENDENT STUDENTS ON**  
 19               **MEDICALLY NECESSARY LEAVE OF ABSENCE.**

20       “(a) *MEDICALLY NECESSARY LEAVE OF ABSENCE.*—  
 21 *In this section, the term ‘medically necessary leave of ab-*  
 22 *sence’ means, with respect to a dependent child described*  
 23 *in subsection (b)(2) in connection with a group health plan,*  
 24 *a leave of absence of such child from a postsecondary edu-*

1 *cational institution (including an institution of higher edu-*  
2 *cation as defined in section 102 of the Higher Education*  
3 *Act of 1965), or any other change in enrollment of such*  
4 *child at such an institution, that—*

5           “(1) *commences while such child is suffering*  
6 *from a serious illness or injury;*

7           “(2) *is medically necessary; and*

8           “(3) *causes such child to lose student status for*  
9 *purposes of coverage under the terms of the plan.*

10       “(b) *REQUIREMENT TO CONTINUE COVERAGE.—*

11           “(1) *IN GENERAL.—In the case of a dependent*  
12 *child described in paragraph (2), a group health plan*  
13 *(or a health insurance issuer that provides health in-*  
14 *surance coverage in connection with a group health*  
15 *plan) shall not terminate coverage of such child under*  
16 *such plan or health insurance coverage due to a medi-*  
17 *cally necessary leave of absence before the date that is*  
18 *the earlier of—*

19           “(A) *the date that is 1 year after the first*  
20 *day of the medically necessary leave of absence;*

21           *or*

22           “(B) *the date on which such coverage would*  
23 *otherwise terminate under the terms of the plan*  
24 *or health insurance coverage.*

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

5                   “(A) is a dependent child, under the terms  
6                   of the plan, of a participant or beneficiary of the  
7                   plan; and

8                   “(B) was enrolled in the plan (or health in-  
9                   surance coverage offered in connection with the  
10                  plan), on the basis of being a student at a post-  
11                  secondary educational institution (as described  
12                  in subsection (a)), immediately before the first  
13                  day of the medically necessary leave of absence  
14                  involved.

15           “(3) *CERTIFICATION BY PHYSICIAN.*—Paragraph  
16           (1) shall apply to a group health plan (or health in-  
17           surance coverage offered by an issuer in connection  
18           with a group health plan) only if the plan or issuer  
19           has received written certification by a treating physi-  
20           cian of the dependent child which states that the child  
21           is suffering from a serious illness or injury and that  
22           the leave of absence (or other change of enrollment)  
23           described in subsection (a) is medically necessary.

24           “(c) *NOTICE.*—A group health plan, and a health in-  
25           surance issuer providing health insurance coverage in con-

1 nection with a group health plan, shall include, with any  
2 notice regarding a requirement for certification of student  
3 status for coverage under the plan or coverage, a description  
4 of the terms of this section for continued coverage during  
5 medically necessary leaves of absence. Such description  
6 shall be in language which is understandable to the typical  
7 plan participant.

8       “(d) *NO CHANGE IN BENEFITS.*—A dependent child  
9 whose benefits are continued under this section shall be enti-  
10 tled to the same benefits as if (during the medically nec-  
11 essary leave of absence) the child continued to be a covered  
12 student at the institution of higher education and was not  
13 on a medically necessary leave of absence.

14       “(e) *COVERAGE UNDER SUCCESSOR PLAN.*—If a plan  
15 sponsor changes group health plans after the first day of  
16 a medically necessary leave of absence of a dependent child  
17 described in subsection (b) but before the date described  
18 under subsection (b)(1), and such new group health plan  
19 offers coverage of beneficiaries as dependent children, such  
20 new group health plan shall be subject to this section in  
21 the same manner as the predecessor group health plan.”.

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

1 **“SEC. 2753. COVERAGE OF DEPENDENT STUDENTS ON**  
 2 **MEDICALLY NECESSARY LEAVE OF ABSENCE.**

3 *“The provisions of section 2707 shall apply to health*  
 4 *insurance coverage offered by a health insurance issuer in*  
 5 *the individual market in the same manner as they apply*  
 6 *to health insurance coverage offered by a health insurance*  
 7 *issuer in connection with a group health plan in the small*  
 8 *or large group market.”.*

9 (c) *AMENDMENTS TO THE INTERNAL REVENUE*  
 10 *CODE.—*

11 (1) *IN GENERAL.—Subchapter B of chapter 100*  
 12 *of the Internal Revenue Code of 1986 (relating to*  
 13 *other group health plan requirements) is amended by*  
 14 *inserting after section 9812 the following new section:*

15 **“SEC. 9813. COVERAGE OF DEPENDENT STUDENTS ON**  
 16 **MEDICALLY NECESSARY LEAVE OF ABSENCE.**

17 *“(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—*  
 18 *In this section, the term ‘medically necessary leave of ab-*  
 19 *sence’ means, with respect to a dependent child, a leave of*  
 20 *absence of such child from a postsecondary educational in-*  
 21 *stitution (including an institution of higher education as*  
 22 *defined in section 102 of the Higher Education Act of*  
 23 *1965), or any other change in enrollment of such child at*  
 24 *such an institution, that—*

25 *“(1) commences while such child is suffering*  
 26 *from a severe illness or injury;*

1           “(2) is medically necessary; and

2           “(3) causes such child to lose full-time student  
3 status under the terms of the plan.

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 plan*  
7 *shall not terminate coverage of such child due to a*  
8 *medically necessary leave of absence before the date*  
9 *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 would*  
14 *otherwise terminate under the terms of the plan.*

15           “(2) *CHILD DESCRIBED.*—*A dependent child de-*  
16 *scribed in this paragraph is a beneficiary under the*  
17 *plan who—*

18           “(A) *is a dependent child, under the terms*  
19 *of the plan, of a participant or beneficiary of the*  
20 *plan;*

21           “(B) *was enrolled in the plan or coverage as*  
22 *of the first day of the medically necessary leave*  
23 *of absence involved; and*

24           “(C) *was enrolled as a full-time student at*  
25 *a postsecondary educational institution (as de-*

1           scribed in subsection (a)) until the first day of  
2           the medically necessary leave of absence involved.

3           “(3) *CERTIFICATION BY PHYSICIAN.*—Paragraph  
4           (1) shall not apply to a group health plan (or health  
5           insurance coverage offered in connection with such a  
6           plan) unless certification by the child’s attending  
7           physician is submitted to the plan (or the issuer  
8           health insurance coverage in connection with the  
9           plan) stating that the dependent child is suffering  
10          from a severe illness or injury and that the leave of  
11          absence is medically necessary.

12          “(c) *NO LOSS OF FULL-TIME STATUS DUE TO BREAK*  
13 *IN SEMESTER.*—Any breaks in the school semester shall not  
14 *disqualify a dependent child described under subsection (b)*  
15 *from coverage under this section.*

16          “(d) *NO CHANGE IN BENEFITS.*—A dependent child  
17 *whose benefits are continued under this section shall be enti-*  
18 *tled to the same benefits as if (during the medically nec-*  
19 *essary leave of absence) the child continued to be a full-*  
20 *time student at the institution of higher education and was*  
21 *not on a medically necessary leave of absence.*

22          “(e) *COVERAGE UNDER SUCCESSOR PLAN.*—If a plan  
23 *sponsor changes group health plans after the first day of*  
24 *a medically necessary leave of absence of a dependent child*  
25 *described in subsection (b) but before the date described*

1 *under subsection (b)(1), and such new group health plan*  
2 *offers coverage of beneficiaries as dependent children, such*  
3 *new group health plan shall be subject to this section in*  
4 *the same manner as the predecessor group health plan.*

5       “(f) *PRESUMPTION.—For purposes of administrative*  
6 *or judicial proceedings, upon certification under subsection*  
7 *(b)(3), there shall be a rebuttable presumption that the re-*  
8 *quirements of paragraphs (1) and (2) of subsection (a) have*  
9 *been met.”.*

10       (2) *CONFORMING AMENDMENT.—The table of sec-*  
11 *tions for subchapter B of chapter 100 of such Code is*  
12 *amended by inserting after the item relating to sec-*  
13 *tion 9812 the following new item:*

“*Sec. 9813. Coverage of dependent students on medically necessary leave of ab-*  
*sence.”.*

14       (d) *EFFECTIVE DATE.—The amendments made by this*  
15 *Act shall apply with respect to plan years beginning on*  
16 *or after the date that is one year after the date of the enact-*  
17 *ment of this Act and to medically necessary leaves of ab-*  
18 *sence beginning during such plan years.*

Union Calendar No. 522

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

**H. R. 2851**

[Report No. 110-806, Part I]

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## **A BILL**

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.

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