

MICHELLE'S LAW

JULY 30, 2008.—Ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 2851]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2851) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. COVERAGE OF DEPENDENT STUDENTS ON MEDICALLY NECESSARY LEAVE OF ABSENCE.

(a) AMENDMENTS OF ERISA.—

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

“SEC. 714. COVERAGE OF DEPENDENT STUDENTS ON MEDICALLY NECESSARY LEAVE OF ABSENCE.

“(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—In this section, the term ‘medically necessary leave of absence’ means, with respect to a dependent child described in subsection (b)(2), a leave of absence of such child from a postsecondary educational institution (including an institution of higher education as defined in section 102 of the Higher Education Act of 1965), or any other change in enrollment of such child at such an institution, that—

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

“(2) is medically necessary; and

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

“(b) REQUIREMENT TO CONTINUE COVERAGE.—

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

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

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

“(2) DEPENDENT CHILD DESCRIBED.—A dependent child described in this paragraph is a beneficiary under the plan who—

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

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

“(C) was enrolled as a full-time student at a postsecondary educational institution (as described in subsection (a)) until the first day of the medically necessary leave of absence involved.

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

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

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

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

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

(2) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 713 the following new item:

“Sec. 714. Coverage of dependent students on medically necessary leave of absence.”.

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

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

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

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

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

“(2) is medically necessary; and

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

“(b) REQUIREMENT TO CONTINUE COVERAGE.—

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

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

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

“(2) DEPENDENT CHILD DESCRIBED.—A dependent child described in this paragraph is, with respect to a group health plan, a beneficiary under the plan who—

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

“(B) was enrolled in the plan (or health insurance coverage offered in connection with the plan), on the basis of being a student at a postsecondary educational institution (as described in subsection (a)), immediately before the first day of the medically necessary leave of absence involved.

“(3) CERTIFICATION BY PHYSICIAN.—Paragraph (1) shall apply to a group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) only if the plan or issuer has received written certification by a treating physician of the dependent child which states that the child is suffering from a serious illness or injury and that the leave of absence (or other change of enrollment) described in subsection (a) is medically necessary.

“(c) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, shall include, with any notice regarding a requirement for certification of student status for coverage under the plan or coverage, a description of the terms of this section for continued coverage during medically necessary leaves of absence. Such description shall be in language which is understandable to the typical plan participant.

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

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

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

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

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

(c) AMENDMENTS TO THE INTERNAL REVENUE CODE.—

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

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

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

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

“(2) is medically necessary; and

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

“(b) REQUIREMENT TO CONTINUE COVERAGE.—

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

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

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

“(2) CHILD DESCRIBED.—A dependent child described in this paragraph is a beneficiary under the plan who—

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

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

“(C) was enrolled as a full-time student at a postsecondary educational institution (as described in subsection (a)) until the first day of the medically necessary leave of absence involved.

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

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

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

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

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

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

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

(d) EFFECTIVE DATE.—The amendments made by this Act shall apply with respect to plan years beginning on or after the date that is one year after the date of the

enactment of this Act and to medically necessary leaves of absence beginning during such plan years.

PURPOSE AND SUMMARY

The purpose of H.R. 2851, Michelle’s Law, is to ensure continuity of health coverage for students, who because of a serious illness or injury, can no longer maintain student status.

BACKGROUND AND NEED FOR LEGISLATION

Michelle Morse was a full-time college student at Plymouth State University in New Hampshire who was diagnosed with colon cancer in 2003. Her doctors recommended that she cut back her college course load while undergoing chemotherapy treatment. She was informed, however, that if she cut back her classroom hours, she would lose her health insurance coverage because she would no longer qualify as a dependent on her parents’ health insurance plan.

Other health insurance coverage options were unaffordable. As a result, she was forced to remain in school as a full-time student while undergoing 14 rounds of chemotherapy. In 2005, she succumbed to her illness. The case spurred interest in protections that would extend the definition of dependents to allow college students needing medical leaves of absence from class work to retain health insurance coverage on their parents’ policies.

Private health insurance contracts define when a person can be considered to be a “dependent” for the purpose of purchasing a family health insurance plan. It is common practice, although far from universal, that dependents are considered to include college-age students as long as those students are enrolled in college full-time. Many States also have legislation that impacts how those dependents can be defined. At least six States—Maine, New Hampshire, New York, Vermont, Virginia, and Wisconsin—have enacted laws similar to Michelle’s Law. Those State laws extend the ability of dependents to remain on their parents’ plan for a limited period of time during a medical leave from full-time student status.¹ Four States—Maryland, Michigan, Rhode Island, and Texas—require insurers to allow college-age dependents who are enrolled part-time in school to remain on their parent’s health insurance plan.² At least nine additional States—Colorado, Florida, Indiana, Massachusetts, Missouri, Montana, New Jersey, New Mexico, and Utah—have enacted laws that would define dependents to include those older than 18 (the exact age varies) regardless of student status.³

States’ laws, however, have limited applicability. States can enact laws that apply to individually-offered health insurance (not offered through employment) and to employment-based coverage as long as it is coverage that is comprised of an insurance product of-

¹Based on a CRS review of State statutes and “The Changing Definition of ‘Dependent’: Who is Insured and For How Long?”—National Conference of State Legislatures, Updated February 2008.

²Based on a CRS review of State statutes and “The Changing Definition of ‘Dependent’: Who is Insured and For How Long?”—National Conference of State Legislatures, Updated February 2008.

³Based on a CRS review of State statutes and “The Changing Definition of ‘Dependent’: Who is Insured and For How Long?”—National Conference of State Legislatures, Updated February 2008.

ferred by companies in the business of selling insurance (including health maintenance organizations.)

If an employer self-insures (funds and retains the risk that the premiums collected may not cover the cost of medical benefits provided) its employees, State laws regulating the business of insurance do not apply. Over one-half of all employees are covered by self-insured employment-based coverage that is exempt from State insurance laws according to the Department of Labor.⁴

Thus to protect individuals across all plan types, Federal action is needed. H.R. 2851, or Michelle's Law, was introduced in the House of Representatives by Representative Hodes. The bill would extend the ability of dependents to remain on their parents' plan for a limited period of time during a medical leave from student status and would apply to all health insurance products, whether sold to individuals or offered as a workplace benefit, and whether or not the employer plan is self-insured. More protective State laws would continue to remain in effect. The bill does not disturb underlying Federal protections relating to rights and responsibilities of plans, issuers, or individuals. The American Cancer Society estimates that this bill could impact about 2,400 college-age students who will be diagnosed with cancer each year.

A similar bill, S. 400, was introduced in the Senate on January 25, 2007, by Senators Sununu, Gregg, and Clinton. That bill would have a more limited scope than H.R. 2851, however, in that it would only apply to employer-provided health insurance. It was referred to the Committee on Health, Education, Labor, and Pensions. No further action has been taken on S. 400.

HEARINGS

No hearings were held in connection with H.R. 2851 in the Committee on Energy and Commerce.

COMMITTEE CONSIDERATION

On Wednesday, July 9, 2008, the Subcommittee on Health met in open markup session and favorably forwarded H.R. 2851, amended, to the full Committee for consideration, by a voice vote. On Wednesday, July 16, 2008, the full Committee met in open markup session and ordered H.R. 2851 favorably reported to the House, amended, by a record vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Dingell to order H.R. 2851 favorably reported to the House, amended, was agreed to by a record vote of 40 yeas and 0 nays, with two Members voting present. The following is the recorded vote taken on the motion, including the names of those Members voting for and against:

⁴About 54 percent of workers were enrolled in employment-based coverage that was self-insured in CY 2005. Unpublished Department of Labor estimates based on March 2006 CPS.

**COMMITTEE ON ENERGY AND COMMERCE -- 110TH CONGRESS
ROLL CALL VOTE # 57**

BILL: H.R. 2851, 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, or "Michelle's Law", as approved by the Subcommittee on Health on July 9, 2008.

MOTION: A Motion by Mr. Dingell to order H.R. 2851 favorably reported to the House, amended.

DISPOSITION: **AGREED TO**, by a roll call vote of 40 yeas, 2 nays, and 2 present.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Dingell	X			Mr. Barton	X		
Mr. Waxman				Mr. Hall	X		
Mr. Markey				Mr. Upton	X		
Mr. Boucher				Mr. Stearns	X		
Mr. Towns				Mr. Deal	X		
Mr. Pallone	X			Mr. Whitfield	X		
Mr. Gordon	X			Mrs. Cubin			
Mr. Rush				Mr. Shimkus			X
Ms. Eshoo	X			Mrs. Wilson	X		
Mr. Stupak	X			Mr. Shadegg			X
Mr. Engel				Mr. Pickering			
Mr. Green				Mr. Fossella			
Ms. DeGette	X			Mr. Blunt			
Ms. Capps	X			Mr. Buyer			
Mr. Doyle	X			Mr. Radanovich	X		
Ms. Harman	X			Mr. Pitts	X		
Mr. Allen				Ms. Bono Mack	X		
Ms. Schakowsky	X			Mr. Walden	X		
Ms. Solis	X			Mr. Terry	X		
Mr. Gonzalez	X			Mr. Ferguson	X		
Mr. Inslee	X			Mr. Rogers	X		
Ms. Baldwin	X			Mrs. Myrick	X		
Mr. Ross	X			Mr. Sullivan	X		
Ms. Hooley	X			Mr. Murphy	X		
Mr. Weiner	X			Mr. Burgess	X		
Mr. Matheson	X			Ms. Blackburn	X		
Mr. Butterfield							
Mr. Melancon	X						
Mr. Barrow	X						
Mr. Hill							
Ms. Matsui	X						

07/16/2008

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings of the Committee regarding H.R. 2851 are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of H.R. 2851 is to ensure continuity of health coverage for students, who because of a serious illness or injury, can no longer maintain student status. The purpose is to allow the student to continue coverage on their parents' insurance plan for the duration of the plan year.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority, entitlement authority, revenues, and tax expenditures regarding H.R. 2851 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2851 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 2851 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate on H.R. 2851 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 28, 2008.

Hon. JOHN D. DINGELL,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2851, the Michelle's Law.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Stewart.

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

H.R. 2851—Michelle's Law

H.R. 2851 would require that group health plans continue to provide coverage for full-time college students who take a medically necessary leave of absence from school. Currently, health plans extend coverage to dependents of family policyholders as long as the dependent is either 18 or younger or 22 or younger and enrolled at a post-secondary institution. Dependents who are covered by the group health plan on the basis of their enrollment at a post-secondary institution may lose eligibility if they take a leave of absence for any reason. H.R. 2851 would create an exception to that rule by preventing group health plans from terminating coverage if the leave of absence is for medical reasons.

CBO estimates that H.R. 2851 would have no significant impact on the budget. It would have a negligible impact on federal revenues. CBO assumes that less than one percent of students go on medical leave of absence annually, of which approximately half are covered as dependents under employer-sponsored insurance. Furthermore, many states already require employer-sponsored plans to cover dependents up to 22 years of age and older for other reasons; students in these states would not be affected by the proposed law. This leaves a very small proportion of students enrolled in post-secondary educational institutions to whom the bill would apply.

An insurer's cost of covering a college student who goes on medical leave can be significant; for those taking medical leaves of absence, the most common causes are mental disorders, major illnesses such as cancer, drug and alcohol-related problems, and serious trauma. However, due to the small number of students who take medical leaves of absence and state requirements that plans cover dependents above 22 years of age, the overall cost to group health plans would be negligible.

H.R. 2851 would not impose an intergovernmental mandate but would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA). (The bill would marginally affect the budgets of state and local governments only if they chose to comply with the bill's requirements.) The bill would impose a private-sector mandate by requiring group health plans to continue the coverage of full-time students enrolled in a post-secondary institution who take a medically necessary leave of absence. CBO estimates that the costs of complying with the mandate would be small and would not exceed the thresholds established in UMRA (\$136 million in 2008, adjusted annually for inflation).

The CBO staff contacts for this estimate are Robert Stewart (for federal costs) and Stuart Hagen (for the private-sector impact). This estimate was approved by Keith J. Fontenot, Deputy Assistant Director for Health and Human Resources, Budget Analysis Division.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 2851 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 2851.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for H.R. 2851 is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian Tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 2851 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1995.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section establishes the short title of the legislation as “Michelle’s Law”.

*Section 2. Coverage of dependent students on medically necessary leave of absence**(a) Amendments of ERISA*

This provision would add a new section to the Employee Retirement Income Security Act of 1974 (ERISA) requiring all employer-provided health insurance plans (whether insured or self-insured) to continue coverage for a child dependent on a medically necessary leave of absence for a period of up to one year after the first day of the leave of absence or the date on which such coverage would otherwise terminate under the terms of the plan, whichever is earlier. Very small employer plans, those with fewer than 2 participants, are exempted from this requirement. A dependent child is described as a dependent under the terms of the plan who was enrolled in the plan on the first day of the medically necessary leave of absence and was enrolled as a full-time student at a postsecondary education institution until the first day of the medically necessary leave of absence.

A medically necessary leave of absence is defined as a leave of absence (or any other change in enrollment) from a post secondary education institution that (1) begins while the child is suffering from a severe illness or injury, (2) is medically necessary, and (3) causes the child to lose full-time student status under the terms of the plan. The bill would require a certification by the child’s attending physician be submitted to the plan or issuer stating that the dependent is suffering from a severe illness or injury and that the leave of absence is medically necessary. The bill provides that if the child’s attending physician has made this certification, for purposes of an administrative or judicial proceeding there shall be a rebuttable presumption that the child has met the first two criteria for a medically necessary leave of absence.

The bill states that breaks in the school semester can not disqualify a dependent from protection against disenrollment. The bill states that benefits cannot be reduced during the medically necessary leave of absence. Ordinary rights under ERISA pertaining to items such as appeals, notice, denials, and continuation of COBRA coverage would continue to apply.

(b) Amendments to the Public Health Service Act

Similar provisions are added to the Public Health Service Act, ensuring applicability of the law to insurance carriers and other entities in the business of selling health coverage both to employers and to individuals. The provisions differ from the ERISA provisions described above in the following ways:

- It clarifies that the protections of the legislation apply to dependents who qualify under the plan as students, not solely those who lose full-time student status. This would not require plans to cover any particular class of dependent, but only ensure that all classes of student dependents covered under a plan would receive the protections of the legislation. A plan would not be required to cover a full time student as a dependent. Only that if the plan did cover a full time student as a dependent than the provisions of the bill apply. Similarly, the bill does not require a plan to cover a part time student as a dependent.
- It modifies the definition of medical leave to be the result of a “serious illness or injury” instead of a “severe illness or injury.”
- It modifies the requirement to provide a physician certification so that the child’s “treating” physician must provide such certification instead of the child’s attending physician.
- It adds a requirement that insofar as plans provide notice of the availability of coverage of dependent students, the notice describes that such coverage remains available during medical leave.
- It removes provisions regarding intra-semester breaks and the presumption relating to the burden of proof in legal and administrative proceedings.
- It ensures that certification by the treating physician is sufficient proof of serious illness or injury and the medical necessity of the student’s leave of absence for the protections of the bill to apply.

(c) Amendments to the Internal Revenue Code

Provisions identical to the ERISA amendments are added to the Internal Revenue Code, ensuring the applicability of the law to certain types of health coverage that is not employer sponsored nor sold by entities in the business of selling health insurance or health coverage; such as church-sponsored plans. In addition, these provisions ensure that certain penalties for non-compliance described in the Internal Revenue Code are applicable for entities that are found to be in violation of the provisions.

(d) Effective date

The bill would become effective for plan years beginning on or after one year after the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

**EMPLOYEE RETIREMENT INCOME SECURITY ACT OF
1974**

SECTION 1. This Act may be cited as the “Employee Retirement
Income Security Act of 1974”.

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Sec. 1. Short title and table of contents.

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

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Subtitle B—Regulatory Provisions

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PART 7—GROUP HEALTH PLAN REQUIREMENTS

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SUBPART B—OTHER REQUIREMENTS

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Sec. 714. *Coverage of dependent students on medically necessary leave of absence.*

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TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

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SUBTITLE B—REGULATORY PROVISIONS

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PART 7—GROUP HEALTH PLAN REQUIREMENTS

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SUBPART B—OTHER REQUIREMENTS

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**SEC. 714. COVERAGE OF DEPENDENT STUDENTS ON MEDICALLY NEC-
CESSARY LEAVE OF ABSENCE.**

(a) **MEDICALLY NECESSARY LEAVE OF ABSENCE.**—*In this section, the term “medically necessary leave of absence” means, with respect to a dependent child described in subsection (b)(2), a leave of absence of such child from a postsecondary educational institution (including an institution of higher education as defined in section 102 of the Higher Education Act of 1965), or any other change in enrollment of such child at such an institution, that—*

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

(2) *is medically necessary; and*

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

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

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

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

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

(2) **DEPENDENT CHILD DESCRIBED.**—*A dependent child described in this paragraph is a beneficiary under the plan who—*

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

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

(C) *was enrolled as a full-time student at a postsecondary educational institution (as described in subsection (a)) until the first day of the medically necessary leave of absence involved.*

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

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

(d) **NO CHANGE IN BENEFITS.**—*A dependent child whose benefits are continued under this section shall be entitled to the same benefits as if (during the medically necessary leave of absence) the child continued to be a full-time student at the institution of higher education and was not on a medically necessary leave of absence.*

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

(f) **PRESUMPTION.**—*For purposes of administrative or judicial proceedings, upon certification under subsection (b)(3), there shall be a rebuttable presumption that the requirements of paragraphs (1) and (2) of subsection (a) have been met.*

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PUBLIC HEALTH SERVICE ACT

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TITLE XXVII—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

PART A—GROUP MARKET REFORMS

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Subpart 2—Other Requirements

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SEC. 2707. COVERAGE OF DEPENDENT STUDENTS ON MEDICALLY NECESSARY LEAVE OF ABSENCE.

(a) *MEDICALLY NECESSARY LEAVE OF ABSENCE.*—In this section, the term “medically necessary leave of absence” means, with respect to a dependent child described in subsection (b)(2) in connection with a group health plan, a leave of absence of such child from a postsecondary educational institution (including an institution of higher education as defined in section 102 of the Higher Education Act of 1965), or any other change in enrollment of such child at such an institution, that—

- (1) commences while such child is suffering from a serious illness or injury;
- (2) is medically necessary; and
- (3) causes such child to lose student status for purposes of coverage under the terms of the plan.

(b) *REQUIREMENT TO CONTINUE COVERAGE.*—

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

- (A) the date that is 1 year after the first day of the medically necessary leave of absence; or
- (B) the date on which such coverage would otherwise terminate under the terms of the plan or health insurance coverage.

(2) *DEPENDENT CHILD DESCRIBED.*—A dependent child described in this paragraph is, with respect to a group health plan, a beneficiary under the plan who—

- (A) is a dependent child, under the terms of the plan, of a participant or beneficiary of the plan; and
- (B) was enrolled in the plan (or health insurance coverage offered in connection with the plan), on the basis of being a student at a postsecondary educational institution (as described in subsection (a)), immediately before the first day of the medically necessary leave of absence involved.

(3) *CERTIFICATION BY PHYSICIAN.*—Paragraph (1) shall apply to a group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) only if the plan or issuer has received written certification by a treating

physician of the dependent child which states that the child is suffering from a serious illness or injury and that the leave of absence (or other change of enrollment) described in subsection (a) is medically necessary.

(c) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, shall include, with any notice regarding a requirement for certification of student status for coverage under the plan or coverage, a description of the terms of this section for continued coverage during medically necessary leaves of absence. Such description shall be in language which is understandable to the typical plan participant.

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

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

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PART B—INDIVIDUAL MARKET RULES

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Subpart 3—General Provisions

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SEC. 2753. COVERAGE OF DEPENDENT STUDENTS ON MEDICALLY NECESSARY LEAVE OF ABSENCE.

The provisions of section 2707 shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

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INTERNAL REVENUE CODE OF 1986

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Subtitle K—Group Health Plan Requirements

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CHAPTER 100—GROUP HEALTH PLAN REQUIREMENTS

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Subchapter B—Other Requirements

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

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SEC. 9813. COVERAGE OF DEPENDENT STUDENTS ON MEDICALLY NECESSARY LEAVE OF ABSENCE.

(a) *MEDICALLY NECESSARY LEAVE OF ABSENCE.*—In this section, the term “medically necessary leave of absence” means, with respect to a dependent child, a leave of absence of such child from a post-secondary educational institution (including an institution of higher education as defined in section 102 of the Higher Education Act of 1965), or any other change in enrollment of such child at such an institution, that—

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

(2) is medically necessary; and

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

(b) *REQUIREMENT TO CONTINUE COVERAGE.*—

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

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

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

(2) *CHILD DESCRIBED.*—A dependent child described in this paragraph is a beneficiary under the plan who—

(A) is a dependent child, under the terms of the plan, of a participant or beneficiary of the plan;

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

(C) was enrolled as a full-time student at a postsecondary educational institution (as described in subsection (a)) until the first day of the medically necessary leave of absence involved.

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

(c) *NO LOSS OF FULL-TIME STATUS DUE TO BREAK IN SEMESTER.*—Any breaks in the school semester shall not disqualify a de-

pendent child described under subsection (b) from coverage under this section.

(d) *NO CHANGE IN BENEFITS.*—A dependent child whose benefits are continued under this section shall be entitled to the same benefits as if (during the medically necessary leave of absence) the child continued to be a full-time student at the institution of higher education and was not on a medically necessary leave of absence.

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

(f) *PRESUMPTION.*—For purposes of administrative or judicial proceedings, upon certification under subsection (b)(3), there shall be a rebuttable presumption that the requirements of paragraphs (1) and (2) of subsection (a) have been met.

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