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**DATE:** January 27, 2009  
**TO:** Our Valued Client Partners & Friends  
**FROM:** HIB Account Team  
**RE:** **LEGISLATIVE UPDATE 2009-02**  
**Michelle's Law: The Federal Law and the California Law**

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We are pleased to bring you our **Legislative Update 2009-02: Michelle's Law: The Federal Law and the California Law**. Both Federal and California passed similar laws extending coverage to students who are on medical leave from school. This memorandum outlines both laws and the differences.

We hope you find this informative, and please, and as usual, if you have any questions, contact your HIB Account Team for assistance.

## MICHELLE'S LAW: THE FEDERAL LAW AND THE CALIFORNIA LAW

### TWO NEW LAWS

Both Congress and the California Legislature have enacted legislation requiring group health plans to continue medical benefit coverage for students who take a medical leave of absence from school. Both laws are referred to as "Michelle's Law" due to its common origin in response to a tragic loss of a child who lost coverage under a group health plan while on a medical leave of absence.

### EFFECTIVE DATES

The California law became effective January 1, 2009, while the federal law is effective on the first day of the Plan Year on or after October 9, 2009 for leaves of absence which begin after the effective date of the law. *It is important to note that the two laws are NOT identical.* The purpose of this Memorandum is to provide a general description of the two laws and to highlight their differences.

### THE FEDERAL LAW (H.R. 2851)

- 1. In General.** In the case of a qualifying dependent child, a group health plan (whether insured or self-funded) may not terminate health care coverage for that child as a result of the child taking a medically necessary leave of absence from school (or a change of school enrollment otherwise resulting in ineligibility for health coverage under the health plan), before the earlier of one year from the date leave began or the date the child would otherwise lose coverage under the plan for other reasons (e.g. limiting age).
- 2. Qualifying Dependent Child.** To qualify for this benefit the dependent child must be qualified under the health for coverage on the basis that he/she is a student at a post-secondary institution as defined under federal law, before the first day of the medical leave.

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3. **Physician Certification.** For the student to qualify for this extension, the plan must receive written certification from his/her treating physician stating that the student is suffering from a serious illness or injury and that the leave of absence (or change in enrollment) is medically necessary. The change in enrollment, if applicable, must result in the loss of eligibility under the health plan definition of Student Coverage for the law to apply (e.g. full-time to part-time status).
4. **The Benefit.** The coverage provided during the period must be the same coverage he/she would have had had the leave of absence not occurred. If the benefits under the plan change during the extension, the new benefits would be available to the student.
5. **Notice Requirement.** The federal law requires health plans to provide notice of the availability of this extended coverage along with any notice it sends to participants seeking certification of student status as a part of its eligibility process. The notice must be in language easily understood by the average plan participant.
6. **Applicability.** Since the new law modifies the Employee Retirement Income Security Act (adding Section 714), as well as the Public Health Service Act and the Internal Revenue Code, the law applies to all private employer plans whether insured or self-funded as well as to plans sponsored by public agencies (other than federal agencies).

### THE CALIFORNIA LAW (S.B. 1168)

1. **In General.** The new California law also requires insurance carriers and health care service plans to continue health coverage in the event a qualifying dependent child takes a medically necessary leave of absence from school. The extension, like the federal law, is for up to one year or cessation of eligibility under other terms of the plan (e.g. limiting age), whichever is earlier. It is important to note that California's version does not apply to self-insured plans. In addition the state law does not apply to Medicaid or Medicare. Since typical plans cover children to age 19, the term "secondary school" would most likely include junior colleges.
2. **Qualifying Dependent Child.** Under the state law, the child must be incapable of self-sustaining employment by reason of a physically or mentally disabling, injury, illness, or condition and must be chiefly dependent upon the covered employee for support and maintenance. California law also allows the extension for students in secondary school who would otherwise lose coverage for dropping out of school as a result of medical necessity.
3. **Physician Certification.** Under the state law, the insurer/HMO can terminate the student's coverage if it has not received proof of the disabling condition and that the employee is the chief provider of support and maintenance within 60 days of the insurer/HMO's notice that coverage is terminating for loss of student status. Please note the federal law sets no time limit for providing evidence.
4. **The Benefit.** The benefit under California law is the same duration as the federal benefit and the coverage changes as it changes for participants who are not students on medical leave.
5. **Notice Requirement.** California law requires all insurers/HMOs offering health care coverage to provide a notice to the covered employee with a dependent 90 days prior to the reaching his/her initial limiting age (e.g. age 19). The notice must include a description of the requirements for extension under Michelle's Law. Coverage will terminate for that dependent absent a showing of student status

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or that student status was interrupted by a qualifying injury, illness or condition within the 60 day period following the carrier notice. Note that federal law requires a similar notice.

6. **Applicability.** As we said, the California version of Michelle's Law will not apply to self-funded plans covering California employees.

## DISCUSSION

1. **COBRA.** It is important to note that neither the state nor the federal versions of Michelle's Law discuss the impact of Michelle's Law on state or federal COBRA rights. Absent future legal guidance, we expect that the extension of coverage under Michelle's Law will not offset or limit future COBRA rights. In our view, the new laws merely toll the applicability of COBRA rights until there is a COBRA qualifying event.
2. **Preemption.** For Plan Years beginning on or after October 9, 2009, federal law will extend the protections of Michelle's Law to self-funded health plans. For California employers, the provisions more favorable to the plan participant than the federal version will remain in place, such as the applicability to schooling which does not meet the standards of the federal law.
3. **Employer Responsibilities.** At present, under California law, the insurers and health care service organizations will circulate all appropriate notices including a notice to dependents who are approaching the end of eligibility. Once the federal law takes effect, then employers with self-funded plans must assure the distribution of the notices required under Michelle's Law.

We also recommend that employers or plan sponsors audit the status of dependents under the plan with regard to continuing eligibility for benefits under the plan absent any carrier efforts to do so.

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