

110TH CONGRESS  
1ST SESSION

# 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.

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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

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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,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “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), a leave of absence of such child from

18       a postsecondary educational institution (including an in-

19       stitution of higher education as defined in section 102 of

20       the Higher Education Act of 1965), or any other change

21       in enrollment of such child at such an institution, that—

22           “(1) commences while such child is suffering

23       from a severe illness or injury;

24           “(2) is medically necessary; and

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

3           “(b) REQUIREMENT TO CONTINUE COVERAGE.—

4           “(1) IN GENERAL.—In the case of a dependent  
5 child described in paragraph (2), a group health  
6 plan (or health insurance coverage offered in connec-  
7 tion with such a plan) shall not terminate coverage  
8 of such child due to a medically necessary leave of  
9 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 a bene-  
18 ficiary under the plan who—

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

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

1           “(C) was enrolled as a full-time student at  
2           a postsecondary educational institution (as de-  
3           scribed in subsection (a)) until the first day of  
4           the medically necessary leave of absence in-  
5           volved.

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

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

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

24          “(e) COVERAGE UNDER SUCCESSOR PLAN.—If a  
25          plan sponsor changes group health plans after the first

1 day of a medically necessary leave of absence of dependent  
 2 child described in subsection (b) but before the date de-  
 3 scribed under subsection (b)(1), and such new group  
 4 health plan offers coverage of beneficiaries as dependent  
 5 children, such new group health plan shall be subject to  
 6 this section in the same manner as the predecessor group  
 7 health plan.

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

13 (2) CONFORMING AMENDMENT.—The table of  
 14 contents in section 1 of such Act is amended by in-  
 15 sserting after the item relating to section 713 the fol-  
 16 lowing new item:

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

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

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

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

3 “(a) **MEDICALLY NECESSARY LEAVE OF ABSENCE.—**

4 In this section, the term ‘medically necessary leave of ab-  
5 sence’ means, with respect to a dependent child, a leave  
6 of absence of such child from a postsecondary educational  
7 institution (including an institution of higher education as  
8 defined in section 102 of the Higher Education Act of  
9 1965), or any other change in enrollment of such child  
10 at such an institution, that—

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

13 “(2) is medically necessary; and

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

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

17 “(1) **IN GENERAL.—**In the case of a dependent  
18 child described in paragraph (2), a group health  
19 plan (or health insurance coverage offered in connec-  
20 tion with such a plan) shall not terminate coverage  
21 of such child due to a medically necessary leave of  
22 absence before 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.

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

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

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

13          “(C) was enrolled as a full-time student at  
14          a postsecondary educational institution (as de-  
15          scribed in subsection (a)) until the first day of  
16          the medically necessary leave of absence in-  
17          volved.

18          “(3) CERTIFICATION BY PHYSICIAN.—Para-  
19          graph (1) shall not apply to a group health plan (or  
20          health insurance coverage offered in connection with  
21          such a plan) unless certification by the child’s at-  
22          tending physician is submitted to the plan or issuer  
23          stating that the dependent child is suffering from a  
24          severe illness or injury and that the leave of absence  
25          is medically necessary.

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

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

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

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



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

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

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

13          (c) AMENDMENTS TO THE INTERNAL REVENUE  
14          CODE.—

15               (1) IN GENERAL.—Subchapter B of chapter  
16               100 of the Internal Revenue Code of 1986 (relating  
17               to other group health plan requirements) is amended  
18               by inserting after section 9812 the following new  
19               section:

20               **“SEC. 9813. 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, a leave  
25               of absence of such child from a postsecondary educational

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

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

7 “(2) is medically necessary; and

8 “(3) causes such child to lose full-time student  
9 status 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  
13 plan shall not terminate coverage of such child due  
14 to a medically necessary leave of absence before the  
15 date that is the earlier of—

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

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

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

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

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

7           “(C) was enrolled as a full-time student at  
8 a postsecondary educational institution (as de-  
9 scribed in subsection (a)) until the first day of  
10 the medically necessary leave of absence in-  
11 volved.

12           “(3) CERTIFICATION BY PHYSICIAN.—Para-  
13 graph (1) shall not apply to a group health plan (or  
14 health insurance coverage offered in connection with  
15 such a plan) unless certification by the child’s at-  
16 tending physician is submitted to the plan (or the  
17 issuer health insurance coverage in connection with  
18 the plan) stating that the dependent child is suf-  
19 fering from a severe illness or injury and that the  
20 leave of absence is medically necessary.

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

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

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

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

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

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

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

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