

# Legislative Update

## Employee Benefits



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## Legislative Roundup 2008: Key Federal and State Actions Passed

2008 was a busy year for the passage of laws and regulations related to employee benefits and health care insurance. Many pieces of legislation were submitted to both federal and state governments; some were dismissed, but many were passed.

This newsletter is intended to give you an overview of some of the legislation and regulations passed in 2008 that are likely to impact your company today or in the near future.

### FEDERAL LEGISLATION

Two key pieces of federal legislation were passed this year: Michelle's Law (HR 2851) and the Mental Health Parity Act (HR 1424).

#### Michelle's Law

Michelle's Law requires health plans to continue coverage for eligible dependent children who take a medical leave of absence from a post-secondary educational institution (e.g., a college, university or vocational school) due to serious illness or injury. Dependent children on a leave of absence must be covered until the earlier of one year from the first day of the leave of absence, or the date on which the coverage otherwise would terminate.

Michelle's Law was enacted on October 9, 2008, and becomes effective for plan years beginning or renewing on or after the date that is *one year after the date of the enactment* of the law. It also applies to medically necessary leaves of absence beginning during such plan years. Michelle's Law applies to all ERISA plans,

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including self-funded plans, and it supersedes state law.

#### Mental Health Parity

This law requires that where mental health benefits, including chemical dependency, are provided, the financial requirements (deductibles, copayments, coinsurance, out-of-pocket expenses) and treatment limitations (frequency, days of coverage, visits, or other limits on scope or duration of treatment) may not be more restrictive than the financial requirements and treatment limitations applied to substantially all medical and surgical benefits.

The Mental Health Parity Law was passed by Congress as part of the Economic Bailout Package. It was enacted on October 3, 2008, and becomes effective for plan years beginning or renewing on or after the date that is *one year after the date of the enactment* of the law. The law applies to all ERISA plans. Employers with a total of 50 or fewer employees are exempt from this law.

#### New Social Security Number Reporting Requirements

Effective January 1, 2009, the previously voluntary CMS data exchange program becomes mandatory, and all employers, insurers and plan administrators will be required to share eligibility data with CMS.

This data includes SSNs not only for employees, but also for covered dependents.

For *existing members* with effective dates prior to, or as of January 1, 2009, health insurance carriers must receive member SSNs by January 1, 2009. Spouse and dependent SSNs are due by January 1, 2010.

For *new members* with effective dates later than January 1, 2009, health insurance carriers must receive member and dependent SSNs by the member's effective date.

The new law also extends to liability insurance (including self-insurance), no-fault insurance, and workers' compensation, but becomes effective for these types of coverage on July 1, 2009.

#### Genetic Information Nondiscrimination Act of 2008 (GINA)

GINA was signed into law on May 21, 2008. It prohibits discrimination on the basis of genetic information, and applies to both employers and health insurance issuers. The federal act contains an exemption for small employers, but the Illinois version, GIPA, does not (see below).

The law becomes effective for the group health plan provisions beginning one year after the date of enactment (May 21, 2009). The employment provisions become effective 18 months after enactment (November 21, 2009).

#### [Newborn's and Mothers' Health Protection Act of 1996](#)

The final rules for this law have now been released. The act generally provides protections on the length of time mothers and their newborn infants may stay in the hospital following childbirth.

The act applies to all ERISA plans, and prohibits restriction of benefits for a hospital stay in connection with childbirth to less than 48 hours (or 96 hours following a Cesarean section).

These rules replace interim final rules adopted in 1998, clarifying several issues regarding the application of the law. The rules will be applicable on the first day of the first plan year on or after January 1, 2009.

## ILLINOIS LEGISLATION

2008 was a busy year for Illinois state legislators as they reviewed some 400 bills relating to the health care and insurance industry. Some of the new laws include:

#### [Dependent Age Expansion Requirement \(HB 5285\)](#)

HB 5285 extends the dependent age to 26 years (and up to age 30 for military veterans), and removes any requirement of student status for a dependent to be considered eligible for continued dependent health coverage. It also requires continuation of coverage for a dependent college student who takes a medical leave of absence or reduces his/her course load to part-time because of a catastrophic illness or injury. Coverage continues for up to 12 months from notice of the illness or injury, or until the coverage would have otherwise lapsed pursuant to the terms and conditions

of the policy, whichever comes first.

This law goes into effect on June 1, 2009 for plan years beginning or renewing on or after that date. The law applies to fully-insured plans including HMO and individual, *as well as to self-insured counties, municipalities and schools.*

#### [Marriage and Family Therapists Mandate \(HB 953\)](#)

Similar to the federal Mental Health Parity Law, Illinois HB 953 requires coverage for the treatment of mental, emotional and nervous disorders by a licensed marriage and family therapist.

This law became effective on the date of its passage on September 22, 2008 and applies to fully insured plans.

#### [GIPA \(SB 2399\)](#)

Similar to the federal law, GINA, GIPA changes the current law to include all Illinois employers, labor unions and licensing bodies. It bans employers from seeking genetic information of job applicants and their family members, and prohibits employers from hiring, firing, demoting or retaliating against applicants and employees based on their genetic profile or that of a family member.

The effective date of GIPA is January 1, 2009.

#### [Anorexia and Bulimia Mandate \(HB 1432\)](#)

This mandate expands the definition of "serious mental illness" to include anorexia and bulimia. The law becomes effective January 1, 2009 for fully insured plans.

#### [Shingles Vaccine Mandate \(HB 4602\)](#)

This mandate requires coverage for a shingles vaccine when ordered by a licensed physician for an individual 60 years of age or older.

Effective January 1, 2009, the law applies to

fully insured plans, state employees under the State employees Group Health Insurance Act, *and self-insured municipalities, counties and schools.*

#### [Hospital Uninsured Patient Discount Act \(SB 2380\)](#)

This act sets a limit of up to 35% and 65% of hospital charges that can be charged to the uninsured. It took effect in two parts: September 22, 2008 and December 23, 2008.

For more information about federal laws, please visit:  
<http://thomas.loc.gov>

For more information about Illinois legislation, please visit:  
<http://www.ilga.gov/>

If you have questions about this Legislative Roundup, please contact your Mesirow Financial representative.

To view our archive of *Mesirow Financial Legislative Updates* and *Looks At* newsletters, please visit:  
<http://www.mesirowfinancial.com/benefits/default.jsp>

#### *Sources:*

*Centers for Medicare and Medicaid Services (CMS)*  
*Blue Cross and Blue Shield of Illinois*  
*Library of Congress/Thomas State of Illinois*

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