Kilpatrick

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Michelle's Law is Still Alive (Barely)

As noted in our August 17th post, many sponsors are applying the age 26 regulations to children as defined in IRC Section 152(f)(1). This means that other children, such as children of a legal guardian, children of a domestic partner or grandchildren, would not be covered by the mandatory age 26 rules. Thus, applicable plans could apply the usual dependency tests to these children as they have in the past (e.g., age 19 and age 25 if a full time student).

If a plan sponsor did apply full-time student rules to children not covered by the age 26 regulations, then Michelle's Law would still apply to those children. This is because Michelle's Law (ERISA Section 714) is triggered by the use of student status as an eligibility tool. Thus, plan sponsors who would like to eliminate Michelle's Law administration would need to apply the age 26 regulations to all dependent classifications (or otherwise not use student status as an eligibility criteria).