

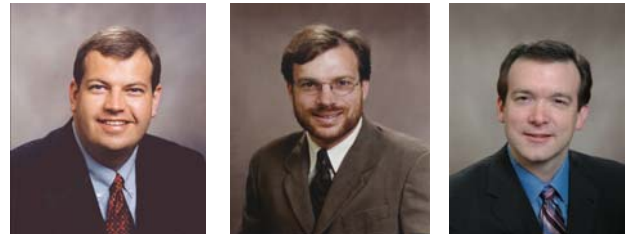
## ERISA & DISABILITY BENEFITS NEWSLETTER

### ABOUT OUR FIRM

Eric Buchanan & Associates, PLLC is a full-service disability benefits, employee benefits, and insurance law firm. The attorneys at our firm have helped thousands of disabled people who have been denied social security disability benefits, ERISA LTD benefits, health insurance, life insurance and other ERISA employee benefits, as well as private disability and health insurance benefits.

For more Information about Eric Buchanan & Associates, PLLC, visit our website at [www.buchanandisability.com](http://www.buchanandisability.com).

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### A BRIEF EXPLORATION OF THE RELATIONSHIP BETWEEN SOCIAL SECURITY DISABILITY, MEDICARE & COBRA

BY: D. SETH HOLLIDAY

If you are a practitioner in the area of Social Security disability, then you need to know the basics of how your area of practice interacts with both Medicare and COBRA. As you probably already know, Social Security disability, Medicare and COBRA proceed from complicated and highly technical statutes that interrelate in non-intuitive ways. Medicare is government health insurance for people who are insured under Title II of the Social Security Act. Medicare coverage is available to Social Security recipients age 65 and above and is available to disabled people who are found disabled and entitled to benefits under Title II of the Social Security Act. 42 U.S.C. § 426. For people under 65 who become disabled, Medicare benefits are available after a waiting period of 29 months from the date of the agencies' finding of the onset of disability or 24 months after entitlement to benefits. 42 U.S.C.A. § 426(f). Medicare starts two years after a disabled person's DENT (date of entitlement), which means Medicare coverage begins 2 years after the first month the person is due a Title II Social Security check – this date is determined once the person is found disabled.

COBRA, an acronym for the Consolidated Omnibus Budget Reconciliation Act of 1985, intersects with both

Social Security disability and Medicare in a number of ways, especially as it added ERISA Title I, Part 6, requiring that the sponsor of a group health plan make continuation coverage available to employees, spouses, ex-spouses, dependents, and others for certain periods following an event that might otherwise result in loss of coverage. COBRA does not require that an employer provide or offer health care coverage to its employees, but COBRA does mandate that any employer that does offer health care benefits must continue coverage in prescribed circumstances. Moreover, COBRA covers health care plans only and does not cover company provided disability plans or company sponsored life insurance plans. Additionally, coverage may not be conditioned upon evidence of insurability.

It is especially notable that under COBRA the employer is not required to provide coverage at the same cost as it was offered to the beneficiary while employed. Indeed, in most cases, the employer will require the beneficiary to pay the entire cost of the monthly premium and COBRA allows employers to charge 102% of the premium, the added 2% as a handling fee. Because of this cost shifting, beneficiaries are often shocked to find that the health benefits they received as

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an employee that were once free or provided at greatly reduced cost may now cost hundreds of dollars under COBRA.

In any case, COBRA is triggered by "qualifying events" that would otherwise result in loss of coverage. 29 U.S.C. § 1163. A qualifying event is a statutorily enumerated event that, with respect to any covered employee, but for the continuation of coverage required under this part, would result in the loss of coverage of a qualified beneficiary. The duration of COBRA coverage varies with the qualifying event but the most common duration is 18 months for a person who is terminated, or loses coverage due to a reduction in hours. 29 U.S.C. § 1162(2)(A)(i) and 29 U.S.C. § 1163(2). However, if a qualified beneficiary is terminated, the usual 18 months provided under 29 U.S.C. § 1162(2)(A)(i) may be extended to 29 months (for both the employee and any other qualified beneficiaries, such as a spouse or dependants) if a person is found disabled under Title II (Social Security Disability Insurance) or Title XVI (Supplemental Security Income). 29 U.S.C. § 1162(2)(A)(v). Beware though – in order to extend the coverage from 18 to 29 months, the person must 1) have been found to be disabled within the first 60 days of continuation of COBRA coverage, 2) must notify the plan administrator within 60 days of the date of determination by the Social Security Administration, and 3) must provide such notice before the end of the continued COBRA coverage. See, 29 U.S.C. § 1162(2)(A)(v), incorporating the 60 day-requirement of 29 U.S.C. § 1166(a)(3).

Coverage under COBRA ends at the conclusion of the duration periods set out in 29 U.S.C. § 1162(2)(A) (for some exceptions, see, e.g., 29 U.S.C. § 1162(2)(D)(ii)). Furthermore, if a person has extended COBRA coverage from 18 to 29 months on account of disability

under the Social Security Act, and receives a "final determination" that he or she is no longer disabled, the COBRA ends at the beginning of the month that starts 30 days after the date of the SSA "final determination." 29 U.S.C. § 1162(2)(E). However, this is unlikely as a person would have to win her Social Security case, then have it reviewed, have it denied, and receive a "final decision" that her disability had ended, all in 29 months. Unless the person fails to appeal a cessation of benefits, the disabled person is entitled to continue drawing benefits until the case has been reviewed by an ALJ, so the chances of all that happening in 29 months are not very good.

In summary, if you are a Social Security disability practitioner you need to understand how a decision with request to a claimant's disability impacts both Medicare and COBRA. Initially, Medicare coverage is available to people under the age of 65 who become disabled after a waiting period of 29 months from the date of the agencies' finding of the onset of disability or 24 months after entitlement to benefits. Furthermore, if your client is found disabled by the Social Security Administration then he or she is entitled to an 11 month extension of COBRA benefits if certain notice provisions are met. Finally, if your client receives a "final determination" that he or she is not disabled, then COBRA ends at the beginning of the month that starts 30 days after the date of the SSA "final determination." As you no doubt recognize – it is essential for practitioners to develop an understanding of the interplay between Social Security disability, Medicare and COBRA because it is our obligation to make sure that our client's entitlements to health insurance are appropriately preserved.

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### NEED A SPEAKER?

The attorneys at Eric Buchanan & Associates are available to speak to your organization regarding Social Security Disability, ERISA Long-term Disability, Group Long-term Disability, Private Disability Insurance, ERISA Benefits, Denied Health Insurance Claims and Life Insurance Claims. Contact Molina Haynes, Office Manager at (423) 634-2506 or via email at [mhaynes@buchanandisability.com](mailto:mhaynes@buchanandisability.com)

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