



## **NEW JERSEY LAW REVISION COMMISSION**

### **Final Report Addressing the Statute of Limitations for Medical Provider Claims in Workers' Compensation Cases**

**July 15, 2021**

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## Executive Summary

Since 2012, the Division of Workers' Compensation (the Division) has been vested with jurisdiction over all disputed claims brought by medical providers for the payment of services rendered to injured employees.<sup>1</sup> Complaints before the Division are subject to a two-year statute of limitations.<sup>2</sup> Lawsuits predicated on contracts, however, have traditionally been subject to a six-year statute of limitations.<sup>3</sup>

Although exclusive jurisdiction for disputed claims by medical providers was vested with the Division by a 2012 amendment to the Workers' Compensation statutes, the legislative history regarding that amendment does not address which statute of limitations applies to these actions. The absence of clear direction on this issue was considered by the Appellate Division matter of *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac*.<sup>4</sup>

The Commission recommends modification of the Workers' Compensation statutes to clearly identify the statute of limitations that applies to medical provider claims. The length of the statute of limitations, however, involves policy determinations best suited to the Legislature.

## Statutes Considered

### **N.J.S. 34:15-15. Medical and hospital service**

...Exclusive jurisdiction for any disputed medical charge arising from any claim for compensation for a work-related injury or illness shall be vested in the division....

### **N.J.S. 34:15-51 Claimant required to file petition within two years; contents, minors**

**Every claimant for compensation** under Article 2 of this chapter (R.S. 34:15-7 et seq.) **shall**, unless a settlement is effected or a petition filed under the provisions of R.S. 34:15-50, **submit to the Division of Workers' Compensation a petition filed and verified** in a manner prescribed by regulation, **within two years after the date on which the accident occurred**, or in case an agreement for compensation has been made between the employer and the claimant, then within two years after the failure of the employer to make payment pursuant to the terms of such agreement; or in case a part of the compensation has been paid by the employer, then within two years after the last payment of compensation except that repair or replacement of prosthetic devices shall not be construed to extend the time for filing of a claim petition.... [emphasis added]

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<sup>1</sup> N.J.S. 34:15-15.

<sup>2</sup> N.J.S. 34:15-51.

<sup>3</sup> N.J.S. 2A:14-1.

<sup>4</sup> *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565 (App. Div. 2019).

## Background

Historically, a medical provider was permitted to file a collection action for payment of its services in the Superior Court, and was not required to participate in the patient’s pending workers’ compensation action.<sup>5</sup> A lawsuit brought by a medical provider against a patient was generally predicated upon an express or implied contractual arrangement.<sup>6</sup> Such actions were therefore governed by the statute of limitations set forth in N.J.S. 2A:14-1, which provides that “[e]very action at law for...recovery upon a contractual claim or liability, express or implied... shall be commenced within 6 years next after the cause of such action shall have accrued.”<sup>7</sup>

In 2012, the Legislature amended N.J.S. 34:15-15 and vested the Division with “exclusive jurisdiction for any disputed medical charge arising from any claim for compensation for a work-related injury or illness.”<sup>8</sup> This statutory modification gave rise to *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.* regarding the statute of limitations in such cases.

In the *Plastic Surgery Center* case, a number of medical providers filed petitions for payment of services rendered to the employees of each employer.<sup>9</sup> The petitions were all filed more than two years from the date of each accident, but less than six years from the accrual of the claim.<sup>10</sup>

The compensation judge interpreted the statute of limitations set forth in N.J.S. 34:15-51 to require “every claimant,” including medical providers, to file a petition with the Division within two-years from the date of the accident.<sup>11</sup> As a result, each medical provider’s action was determined to be filed beyond the statute of limitations and dismissed.<sup>12</sup> The medical providers appealed the dismissal of their cases, alleging that the compensation judge misconstrued the statute.<sup>13</sup>

## Analysis

The New Jersey Appellate Division was asked to determine whether, “through its silence, the Legislature intended... to apply the two-year statute of limitations... contained in the Workers’ Compensation Act [to medical claims]... or whether the Legislature intended to **leave things as**

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<sup>5</sup> *Id.* at 569.

<sup>6</sup> *Id.*

<sup>7</sup> N.J.S. 2A:14-1.

<sup>8</sup> *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, at 569.

<sup>9</sup> *Id.* at 568 (App. Div. 2019). The five cases on appeal each set forth a common issue. The Appellate Division consolidated these appeals for purposes of addressing the statute of limitations issue. In addition, and in the interest of judicial economy, the specific facts of each case were omitted by the Appellate Division and the overview set forth herein is modeled upon the statement of facts and procedural history fashioned by the appellate panel.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

**they were and continue to apply the six-year statute of limitations** for suits on contracts. [emphasis added]”<sup>14</sup>

The Court acknowledged that the Division has exclusive jurisdiction over all disputed medical-provider claims arising from any claim for compensation for a work-related injury.<sup>15</sup> The Court was persuaded, however, that the six-year statute of limitations applied to these claims because the “Legislature did not simply express that the Act’s two-year time bar would apply to medical-provider claims.”<sup>16</sup>

The Appellate Division rejected the claim that, pursuant to N.J.S. 34:15-51, “every claimant for compensation” is governed by the Act’s two-year statute of limitations. The Court suggested that “if the Legislature intended such a sea change it would have done so directly, not inferentially” and stated that since the “Legislature failed to explain or express itself on this precise issue, we cannot conclude it intended to so drastically alter existing legal principles.”<sup>17</sup>

A draft version of the bill that amended N.J.S. 34:15-15 would have imposed a duty upon the Division “to provide procedures to resolve... disputes, including a system of binding arbitration and procedural requirements for medical providers or any other party to the dispute.”<sup>18</sup> It was the opinion of the compensation judge that the omission of this language from the final draft of the bill confirmed the Legislature’s belief that medical-provider claims were subject to the statute of limitations found in N.J.S. 34:15-51.<sup>19</sup>

Rejecting the reasoning of the compensation judge, the Appellate Division stated that, “[i]f anything, the belief that the Legislature was already satisfied with existing procedural requirements for these claims more logically suggests it intended that the six-year statute of limitations, which undoubtedly applied to medical-provider claims prior to the amendment, would continue to apply after the amendment was enacted.”<sup>20</sup>

The Appellate Division also found compelling that “the Legislature made no alteration to N.J.S. 34:15-51 when it amended N.J.S. 34:15-15.”<sup>21</sup> The Court reasoned that the word “claimant” in the phrase “*every claimant for compensation*,” in N.J.S. 34-15-51 refers to an “employee” and that “compensation” is defined by the Act as “that to which the employee is entitled for a work related injury....”<sup>22</sup> The Court did not accept that “every claimant” might include everyone with

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<sup>14</sup> *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, at 569.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 571.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* quoting Sponsor’s Statement to A2652 (May 10, 2012).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 572.

<sup>22</sup> *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, at 572.

an action pending in the Division; or, that “compensation” could mean remuneration for medical services provided to an injured worker.<sup>23</sup>

The statute of limitations in workers’ compensation actions provides, in relevant part that, “[e]very claimant for compensation... shall... submit to the Division of Workers’ Compensation a petition and verified complaint... within two years after the date on which the **accident occurred**....”<sup>24</sup>

The Appellate Division posited that a medical provider may treat an individual for a period longer than two years after an accident.<sup>25</sup> The Court suggested a situation in which an individual does not receive treatment until two years after work-related injury and questioned an interpretation of the statutory amendment that would mean that “a medical provider’s right to pursue a legitimate claim might actually be extinguished before it even accrued.”<sup>26</sup> The Court said that it found “nothing but legislative silence on the point in controversy”<sup>27</sup> and it rejected the respondent’s arguments, reversed the judgments of the compensation court, and remanded each matter for further proceedings concerning what it termed “timely claims.”<sup>28</sup>

### **Subsequent History**

The employers’ petitions for certification were granted by the New Jersey Supreme Court on May 14, 2019.<sup>29</sup> In a per curium opinion, the Court affirmed the judgment of the Appellate Division for the reasons expressed in that court’s opinion.<sup>30</sup> The Court also took the opportunity to note that in, “the 2012 amendment to N.J.S.[ ] 34:15-15, the Legislature did not expressly address the statute of limitations.”<sup>31</sup> Regarding the clarification of the statute, the Court said that “[t]he Legislature is, of course, free to do so in the future.”<sup>32</sup>

### **Preliminary Outreach**

In light of the New Jersey Supreme Court’s decision in *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.* the propriety of modifying N.J.S. 34:15-15 to include a statute of limitations was discussed with a Certified Workers’ Compensation attorney<sup>33</sup> who suggested that,

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<sup>23</sup> *Id.*

<sup>24</sup> N.J.S. 34:15-51.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 575.

<sup>28</sup> *Id.*

<sup>29</sup> *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565 (App. Div. 2019), *certif. granted*, 238 N.J. 30, (2019) and *certif. granted*, 238 N.J. 31 (2019) and *certif. denied*, 238 N.J. 57 (2019).

<sup>30</sup> *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 241 N.J. 112 (Feb. 03, 2020).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> E-mail from Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n to Richard Rubenstein, Esq., Rothenberg Rubenstein Berliner & Shinrod, LLC, (Apr. 14, 2020, 5:10 PM EST) (on file with the NJLRC). Mr. Rubenstein has practiced in the area of workers’ compensation since 1985, representing both Petitioners and Respondents in various courts in New Jersey. He is the Vice President to the Council of Safety and Health of New Jersey, and the James

“the period of limitations should be covered by the language of the Act itself, instead of by implication from prior case law or by judicial edict in the *Plastic Surgery Center* case.”<sup>34</sup> The commenter noted that, “[e]very other limitations period in Workers’ Compensation is statutory, and it follows that the medical claim petitions created by Statute under Section 15 should, [be codified] as well.”<sup>35</sup>

### **Additional Outreach**

In connection with the release of the Commission’s Tentative Report and Revised Tentative Report, the Commission sought comments from knowledgeable individuals and organizations, including: the Workers’ Compensation Section of the New Jersey State Bar Association; the New Jersey Council on Safety and Health; the New Jersey Compensation Association; the New Jersey Department of Labor; the New Jersey Self-Insurers Association; the Insurance Council of New Jersey; and private practitioners.

#### **• *A Statute of Limitations – Consensus***

Among the responding commenters, there is a desire for clear legislative direction regarding the time frame within which a medical provider must file a claim in a workers’ compensation action.<sup>36</sup>

There was universal opposition to a six-year statute of limitations for such actions among those commenters who commented on this proposed modification.<sup>37</sup> A two-year, rather than a six-year, statute of limitations on actions brought by medical providers was favored by a majority of the responding commenters.<sup>38</sup>

#### **• *Opposition to a Six Year Statute of Limitations***

Commenters provided the Commission with historical, policy, economic, and practical reasons why the statute of limitations should not extend beyond two years. The underlying reasons fell generally into four categories: (1) medical provider claims are not typically based on a written contract; (2) efficiency; (3) economic impact; and (4) the statutes of limitations in neighboring

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Coleman Inns of Court. See <https://www.rrbslawnj.com/About/Richard-B-Rubenstein.shtml> (last visited Apr. 22, 2020).

<sup>34</sup> E-mail from Richard Rubenstein, Esq., Rothenberg Rubenstein Berliner & Shinrod, LLC, to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (Apr. 15, 2020, 8:59 AM EST) (on file with the NJLRC).

<sup>35</sup> *Id.*

<sup>36</sup> See Rubenstein, *supra* note 34. See letter from Maeve E. Cannon, Esq., Stevens & Lee, on behalf of Mitchell International Inc., to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n at 2 (Aug. 18, 2020) (on file with the NJLRC); the letter from Susan Stryker, Esq., Amery & Ross, P.C., on behalf of Ins. Council of N.J., to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Com’n at 3 (Sept. 29, 2020) (on file with the NJLRC); and the letter from Lisa Chapland, Dir., Gov’t Affairs, N.J. State Bar Ass’n, to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n at 1 (Oct. 27, 2020) (on file with the NJLRC).

<sup>37</sup> See Cannon, *supra* note 36, at 1, \*5; Stryker, *supra* note 36, at 2; Chapland, *supra* note 36, comments at 1.

<sup>38</sup> See Cannon, *supra* note 36, at 2, \*5; Stryker, *supra* note 36, at 3; Chapland, *supra* note 36, comments at 1.

states. These are discussed more fully below.

### 1. *Medical Provider Claims Are Not Typically Based on a Written Contract*

In New Jersey, employers, and their workers' compensation insurers ("payors"), are responsible for reimbursing medical providers for services provided to injured workers.<sup>39</sup> A payor may "direct injured covered employees to receive non-emergency treatment from specified medical providers with whom the payor has a contractual agreement...."<sup>40</sup> Under those circumstances, the parties have a pre-existing, mutual agreement regarding the fee for treatment, and reimbursement is generally not an issue.

In the absence of a contractual agreement, a payor is statutorily responsible for reimbursing a medical provider for services provided to injured workers in amounts that "shall be reasonable and based upon the usual fees and charges which prevail in the same community for similar physicians', surgeons'[,] and hospital services."<sup>41</sup> Where the amount is disputed, "the issue typically is not a contractual one; instead the focus is on what constitutes the usual, customary, and reasonable charges and the payment that should be made for a given medical service rendered to an injured claimant."<sup>42</sup>

Since 2012, when a medical provider disputes the amount paid by a payor, it may file an application for reimbursement with the Division of Workers' Compensation.<sup>43</sup> These claims fall within the exclusive jurisdiction of the Division, and serve as the provider's exclusive remedy for payment under the statute.<sup>44</sup> Medical providers are no longer permitted to file suit in the Law Division against either payors or claimants.<sup>45</sup> Since the Division's "jurisdiction is limited by statute to two years" it has been suggested that a six-year statute of limitations would "impermissibly expand[ ] the Division's exclusive, specific and limited jurisdiction to decide claims for workers' compensation benefits arising under the Act."<sup>46</sup>

### 2. *Efficiency*

Within two years after the date on which the accident occurred, every claimant for compensation must file a petition with the Division.<sup>47</sup> While acknowledging that treatment for

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<sup>39</sup> N.J.S. 34:15-15.

<sup>40</sup> Stryker, *supra* note 36, at 4.

<sup>41</sup> N.J.S. 34:15-15.

<sup>42</sup> Chapland, *supra* note 36, comments at 2, quoting VIRGINIA M. DIETRICH, ADMIN. SUPER. JUDGE, N.J. DEPT. OF LABOR & WORKFORCE DEV., DIV. OF WORKERS' COMP.: TASK FORCE ON MEDICAL PROVIDER CLAIMS, at 3 (Nov. 05, 2002).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* See also Stryker, *supra* note 36, at 4.

<sup>46</sup> Stryker, *supra* note 36, at 13. See also Chapland, *supra* note 36, quoting VIRGINIA M. DIETRICH, ADMIN. SUPER. JUDGE, N.J. DEPT. OF LABOR & WORKFORCE DEV., DIV. OF WORKERS' COMP.: TASK FORCE ON MEDICAL PROVIDER CLAIMS, at 3 (Nov. 05, 2002) and suggesting that "once a medical provider has submitted to the jurisdiction of the Division [the parties] must submit to the Rules of the Division."

<sup>47</sup> N.J.S. 34:15-51.

serious injuries may continue for significant periods of time, commenters have noted that “with a six year limitation period for provider claims, the compensation courts will be left to adjudicate provider claims for cases that were resolved many years before.”<sup>48</sup> Further, an extended look-back period “is likely to open the door to a deluge of additional filings” and significantly delay “injured workers’ claims for indemnity benefits, for authorization of treatment, and payment of current medical expenses”, as well as, “increasing the cost of... the administration of claims....”<sup>49</sup>

### 3. *Economic Impact*

In addition to the impact upon the Division, a six-year statute of limitations may also impact self-insured entities, insurance companies, and businesses.<sup>50</sup> “A six[-]year statute of limitations period on provider claims will result in self-insured entities... as well as insurance companies being required to manage their reserves over a much longer period of time....”<sup>51</sup> The reserves held against such claims may result in premium increases for New Jersey businesses and public and private entities.<sup>52</sup> Additional reserves may also increase an insurer’s liabilities, and reduce its net worth or surplus, thereby limiting the amount of insurance it may provide to its insured.<sup>53</sup> In addition to higher premiums, businesses may experience difficulties in finding coverage as a result of distorted loss profiles.<sup>54</sup>

Higher reserves will similarly impact self-insureds such as public entities. To maintain a larger reserve, these entities will be required to devote funds otherwise intended for public purposes to be reserved against potential claims.<sup>55</sup> Alternatively, funds may have to be used to satisfy higher premiums if a joint insurance fund is required to reserve additional funds for potential claims.<sup>56</sup>

### 4. *Neighboring States*

Commenters suggested that the statute of limitations for medical provider disputes in the Mid-Atlantic and Northeastern states provide for terms shorter than six years, and that these terms have had “seemingly no impact on the availability of providers serving that State’s Worker’s Compensation system.”<sup>57</sup>

Staff research revealed that each of the states in these regions utilizes comprehensive workers’ compensation medical “fee schedules,” or relies on statutory or regulatory references to

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<sup>48</sup> Cannon, *supra* note 36, at 2-3.

<sup>49</sup> Stryker, *supra* note 36, at 12; Chapland, *supra* note 36, comments at 1.

<sup>50</sup> Cannon, *supra* note 36, at 2-3.

<sup>51</sup> *Id.* at 3.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Cannon, *supra* note 36, at 4-5. *See also* Chapland, *supra* note 36, comments at 4 (regarding the statute of limitations for medical provider claims in New York and Pennsylvania).



other medical reimbursement rates. With the exception of New Hampshire<sup>58</sup>, they do not provide an analogous frame of reference to consider the issue raised by the decision in *Plastic Surgery Center*.<sup>59</sup>

New Jersey is one of only six states that do not utilize a fee schedule for medical services in workers' compensation cases.<sup>60</sup> The others are: Indiana, Iowa, Missouri, New Hampshire, and Wisconsin.<sup>61</sup> The statutes of limitation in these states range from six months to six years.<sup>62</sup>

#### • *Prior Legislation*

Bills to establish a statute of limitations for disputed medical provider claims have previously been introduced in the Legislature.<sup>63</sup> They provided that “a medical fee dispute shall be filed with the Division of Workers' Compensation not later than 18 months after the date payment was received....”<sup>64</sup> The bills also provided that, after their effective date, medical providers would have 12 months after the date payment was received within which to file a medical fee dispute with the Division of Workers' Compensation.<sup>65</sup>

Senate bill S764 was introduced on January 09, 2018, and referred to the Senate Labor Committee.<sup>66</sup> On February 01, 2018, Assembly bill A2412 was introduced and referred to the

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<sup>58</sup> Cannon, *supra* note 36, at 5, and N.H. Rev. Stat. Ann. § 281-A:21-a (West 2021) (Compensation for disability, rehabilitation, medical benefits, or death benefits under this chapter shall be barred unless a claim is filed within [three] 3 years after the date of injury....).

<sup>59</sup> See Fig. 1 for an examination of the statutes of limitation in each of the 50 states and the District of Columbia.

<sup>60</sup> See MADELINE KASPER, MPA, MPH & JILLIAN SLAIGHT, PHD, LEGISLATIVE ANALYSTS, LEG. REF. BUREAU: WORKERS' COMP. LAW IN WISCONSIN, at 5 (Jan. 2018); and Angela Childers, *States without comp fee schedules pay more: WCRI, BUSINESS INS.* (May 19, 2020 1:27 PM CST), <https://www.businessinsurance.com/article/20200519/NEWS08/912334636?template=printart>. See Stryker, *supra* note 36, at 3.

<sup>61</sup> *Id.*

<sup>62</sup> IOWA CODE ANN. § 85.27 (West 2021) (per the Dept. of Workforce Develop. medical care must first be authorized by an insurer who is then responsible for payment and disputes are therefore de minimis or non-existent); WIS. ADMIN. CODE DWD § 80.72 (West 2021) (a provider shall file a written request to the department to resolve the dispute within 6 months after an insurer or self-insurer first-refuses to pay); MO. ANN. STAT. § 287.140 (West 2021) (Any application for additional reimbursement shall be filed not later than one year from the date the first notice of dispute of the medical charge was received by the health care provider); IND. CODE ANN. § 22-3-7-17(g) (West 2021) (a medical service provider must file an application for adjustment of a claim for a medical service provider's fee with the board not later than two (2) years after the receipt of an initial written communication from the employer, the employer's insurance carrier, if any, or an agent acting on behalf of the employer after the medical service provider submits a bill for services and uses a fee schedule of sorts for hospital care); N.H. REV. STAT. ANN. § 281-A:21-a (West 2021) (compensation for medical benefits shall be barred unless a claim is filed within 3 years after the date of injury); and in New Jersey, see discussion *supra* of *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565 (App. Div. 2019) (applying a six-year statute of limitations to disputed medical provider claims).

<sup>63</sup> See S.B. 764, 218th Leg., Sec. Annual Sess. (N.J. 2018) (Concerns disputed medical fees in workers' compensation claims) (identical to A.B. A2412); and Chapland, *supra* note 36, comments at 2.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> New Jersey Legislature, <https://www.njleg.state.nj.us/bills/BillsByNumber.asp> (last visited Feb. 05, 2021).

Assembly Labor Committee.<sup>67</sup> Neither bill advanced beyond committee referral nor were they introduced in the current legislative session.

• *Statute of Limitations - Starting Point*

While there was a consensus among the participating commenters that the statute of limitations should be less than six years, there was no consensus regarding when the limitation period should begin.

Options that were suggested focus on period of time calculated from: (1) the date of the injured worker's accident; (2) the date a medical provider receives a payment that is subsequently disputed; or (3) the date on which service is provided to the injured individual. A discussion of each follows.

1. *The Date of the Accident*

The Commission has been urged “to endorse the adoption of a clarifying amendment to the Act confirming that the Act’s two-year period of limitations applies to all claims for compensation, including MPCs [(medical provider claims)].”<sup>68</sup> Such an amendment is said to be “consistent with established Division practice, law and public policy.”<sup>69</sup>

For the reasons discussed in *Plastic Surgery Center, PA*, such a statute of limitations is not without its complications. Claims for compensation, as set forth in N.J.S. 34:15-51, require “every claimant for compensation... [to] submit to the Division... a petition... within two years after the date on which the accident occurred...”<sup>70</sup> It may not be practical to expect a medical provider to know the date of the accident, or when the last benefit was paid. In addition, as noted in *Plastic Surgery Center, PA*, a medical provider may treat an individual for a period greater than two years after an accident.<sup>71</sup> Further, in some circumstances, an individual may not receive treatment until two years following a work-related incident.<sup>72</sup> In either situation, a legislative amendment like that recommended above would cause “a medical provider’s right to pursue a legitimate claim” to be “extinguished before it even accrued.”<sup>73</sup>

2. *The Date of Payment*

The claim period can also begin two years after the payment was received from the payor.<sup>74</sup> The Commission has been asked to consider language that provides:

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<sup>67</sup> *Id.*

<sup>68</sup> Stryker, *supra* note 36, at 3 (emphasis original).

<sup>69</sup> *Id.*

<sup>70</sup> N.J. STAT. ANN. § 34:15-51 (West 2021).

<sup>71</sup> See discussion *supra*, *Plastic Surgery Center, PA*, 457 N.J. Super. at 573.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Cannon, *supra* note 36, at 2; this suggestion also incorporates a phase in period for services rendered before the effective date of the statutory amendment.

For services rendered on or before the effective date of this amendment, a medical fee dispute shall be filed with the Division of Workers['] Compensation not later than \_\_\_\_ years after the date payment is received, and for services rendered on or after the effective date of this amendment, a dispute shall be filed within the Division of Workers['] Compensation no later than two years after the date payment was received.

This language is virtually identical to the language contained in the prior session's S764, mentioned above.<sup>75</sup> It would allow a medical provider to bring a disputed claim six years *after the date that a payment is received*. A situation may arise, for example, in which a payor neglects to issue a payment to the medical provider for a number of years. If the medical provider waited four and one-half years before this omission is addressed by the payor, the plain language of the statute would allow the provider two years from the date it received payment within which to bring a claim.

### 3. *The Date of Service*

A third option is calculating the statute of limitations from the date that medical providers render services.<sup>76</sup> A statute of limitations tied to the date of service would make it “clear to the medical provider when legal action must be taken if a dispute arises over payment [, or lack thereof,] for services rendered.”<sup>77</sup> Such a statutory provision would arguably eliminate the filing of claims by a medical provider long after the underlying claim has been adjudicated.<sup>78</sup>

## **Final Outreach**

The Commission did not receive any objection to the proposed statutory modification set forth in the Revised Draft Tentative Report.

The Insurance Counsel of New Jersey (ICNJ) advised the Commission that it “join[s] the majority of participating stakeholders in seeking a maximum two-year limitation period, consistent with the exclusive jurisdiction the Legislature granted to the Division...”<sup>79</sup> Its support for that statute of limitations was based on “the historical, policy, economic and very real practical reasons set forth in the Report.”<sup>80</sup> The ICNJ emphasized that the absence of a fee schedule makes it “crucial that the provider timely file a petition on a disputed payment in order to determine the UCR in the

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<sup>75</sup> See S.B. 764, 218th Leg., Sec. Annual Sess. (N.J. 2018) (Concerns disputed medical fees in workers' compensation claims) (identical to A.B. A2412); and discussion *supra* at 9-10.

<sup>76</sup> Chapland, *supra* note 36, comments at 1.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> See letter from Susan Stryker, Esq., Amery & Ross, P.C., on behalf of Ins. Council of N.J., to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Com'n at 2 (June 14, 2021).

<sup>80</sup> *Id.* See Revised Tentative Report from Samuel M. Silver, Dep. Dir., Addressing the Statute of Limitations for Medical Provider Claims in Workers' Compensation Cases (Apr. 15, 2021) (on file with the Commission).

absence of an objective standard upon which to calculate the amount which may be due and owing.”<sup>81</sup>

The ICNJ also urged “the adoption of a two-year statute [of limitations] to run from the date of service.”<sup>82</sup> The benefits of implementing such a limitation, according to the ICNJ, are threefold. First, “this approach makes it clear to all providers when the legal action must be commenced....”<sup>83</sup> In addition, such a statute “provides more than ample time for the provider to submit its bill....”<sup>84</sup> Finally, it enables a provider to determine whether to file a claim petition contesting the amount of payment.”<sup>85</sup>

### **Conclusion**

N.J.S. 34:15-15 is silent regarding the statute of limitations that applies in actions involving disputed medical claims. The statute would benefit from the addition of language that clearly states the applicable limitations period. Selecting the length of the statute of limitations, however, involves policy determinations best suited to the Legislature.

The Commission has prepared proposed amendatory language set forth in the Appendix for N.J.S. 34:15-15 based, in part, on the principles set forth in *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac*. The draft language does not contain the period of the statute of limitations, awaiting a determination of the Legislature, but it proposes the associated changes to the statute.

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<sup>81</sup>*Id.* at 3.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* See discussion *supra* at 11 and Chapland, *supra* note 36, comments at 1.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

## Appendix

The proposed modifications to **N.J.S. 34:15-15** and **N.J.S. 34:15-51** (shown with ~~strike~~through, and underlining), follow:

### **N.J.S. 34:15-15 Medical and hospital service**

a. (1) The employer shall furnish to the injured worker such medical, surgical and other treatment, and hospital service as shall be necessary to cure and relieve the worker of the effects of the injury and to restore the functions of the injured member or organ where such restoration is possible; ~~provided, however, that,~~

(2) Pursuant to this section, the employer shall not be liable to furnish or pay for physicians', ~~or surgeons'~~ services in excess of \$50.00 and in addition to furnish or hospital service in excess of \$50.00, unless:

(A) the injured worker or, the worker's physician who provides treatment, or any other person on the worker's behalf, ~~shall~~ files a petition with the Division of Workers' Compensation stating the need for physicians', ~~or surgeons'~~ services in excess of \$50.00, as aforesaid, and such hospital service, or appliances in excess of \$50.00; ~~as aforesaid, and~~

(B) the Division of Workers' Compensation after investigating the need of the same and giving the employer an opportunity to be heard, shall determine that ~~such~~ the physicians' and surgeons' treatment and hospital services are or were necessary; ~~and,~~

(C) the division determines that the fees for the same are reasonable, ~~and~~

(3) The determination of the division pursuant to this section shall make an order requiring the employer to pay for or furnish the same be set forth in an order.

(4) The mere furnishing of medical treatment or the payment thereof by the employer shall not be construed to be an admission of liability.

b. (1) If the employer shall refuse or neglect to comply with the foregoing provisions of this section, the employee may secure such treatment and services as may be necessary and as may come within the terms of this section, and the employer shall be liable to pay therefor; ~~provided, however, that,~~

(2) ~~the~~ The employer shall not be liable for any amount expended by the employee or by any third person on the employee's behalf for any such physicians' treatment and hospital services, unless:

(A) ~~such~~ the employee or any person on the employee's behalf ~~shall have~~ requested the employer to furnish the same and the employer ~~shall have~~ either refused or neglected so to do, ~~or~~;

(B) ~~unless~~ the nature of the injury required such services, and the employer or the superintendent or foreman of the employer, having knowledge of such injury ~~shall have~~ neglected to provide the same, ~~or~~;

(C) ~~unless~~ the injury occurred under such conditions as make impossible the notification of the employer; ~~or~~;

(D) ~~unless~~ the circumstances are so peculiar as shall justify, in the opinion of the Division of Workers' Compensation, the expenditures assumed by the employee for such physicians' treatment and hospital services, apparatus and appliances.

c. All fees and other charges for such physicians' and surgeons' treatment and hospital treatment shall be reasonable and based upon the usual fees and charges which prevail in the same community for similar physicians', surgeons', and hospital services.

d. When an injured employee may be partially or wholly relieved of the effects of a permanent injury, by use of an artificial limb or other appliance, which phrase shall also include artificial teeth or glass eye, the Division of Workers' Compensation, acting under competent medical advice, is empowered to determine the character and nature of such limb or appliance, and to require the employer or the employer's insurance carrier to furnish the same.

e. Fees for medical, surgical, other treatment, or hospital services that have been authorized by the employer or its carrier or its third party administrator or determined by the Division of Workers' Compensation to be the responsibility of the employer, its carrier or third party administrator, or have been paid by the employer, its carrier or third party administrator pursuant to the workers' compensation law, R.S.34:15-1 et seq., shall not be charged against or collectible from the injured worker.

f. (1) Exclusive jurisdiction for any disputed medical charge arising from any claim for compensation for a work-related injury or illness shall be vested in the division.

(2) ~~Petitions~~ For services rendered on or **before** the effective date of P.L.           , c.(C.) (pending before the Legislature as this bill) a medical provider claim<sup>86</sup> filed pursuant to

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<sup>86</sup> E-mail from Steven Stadtmauer, Esq., Celentano, Stadtmauer & Walentowicz, LLP, to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm'n (Dec. 14, 2020, 2:40 PM EST) (on file with the NJLRC) (noting that medical providers do not file petitions, rather they file medical provider applications for payment or reimbursement of medical payment and recommending the use of the term "claims" or "medical provider claims").

this section shall be commenced not later than: ~~within the time frame set forth in N.J.S. 2A:14-1.~~

[A] \_\_\_ [months][years] from the date on which medical service was rendered;<sup>87</sup>

[B] \_\_\_ [months][years] from the date on which the first notice of dispute of the medical charge<sup>88</sup> was received by the medical provider; or

[C] one year from the date of enactment,

whichever is later.

(3) For services rendered **after** the effective date of P.L. \_\_, c.(C.) (pending before the Legislature as this bill) a medical provider claim filed pursuant to this section shall be commenced not later than \_\_\_ [months][years] from the date on which medical service was rendered or the date on which the first notice of dispute of the medical charge was received by the medical provider, whichever is later.

(4) This section shall not apply to non-emergency treatment from medical providers with whom a New Jersey employer or their workers' compensation insurers have a contract regarding fees for such treatment.

~~(3)~~ (5) The treatment of an injured worker or the payment of workers' compensation to an injured worker or dependent of an injured or deceased worker shall not be delayed because of a claim by a medical provider.

g. No provider to the injured worker of medical, surgical, other treatment, or hospital service pursuant to the workers' compensation law, R.S.34:15-1 et seq., shall report any portion of their charges which are alleged to be unpaid, to any collection or credit reporting agency, bureau, or data collection facility until:

(1) a judge of compensation within the Division of Workers' Compensation has fully adjudicated the rights and liabilities of all parties, including the rights of the claimant for payments pursuant to this section, section 1 of P.L.1953, c. 207 (C.34:15-15.1), and section 1 of P.L.1966, c. 115 (C.34:15-15.2), regarding the payment of these charges; or

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<sup>87</sup> See generally GA. CODE ANN. § RULE 203 (West 2021) (providing that medical expenses or the request for reimbursement must be submitted for payment within one year from the date of service or within one year from the date that the claim is accepted or compensable, whichever is later).

<sup>88</sup> See generally MO. ANN. STAT. § 287.140 (West 2021) (a non-fee schedule state whose phased-in statute of limitations provides that applications for payment of additional reimbursement shall be filed no later than two years from the date the first notice of dispute was received by the health provider).

(2) a notice of a stipulation settlement or an order approving settlement regarding the payment of these charges has been filed with the court.

### Comments

N.J.S. 34:15-15 is divided into six, undesignated paragraphs. The draft statute has been restructured and archaic language has been removed and replaced in an effort to promote the accessibility of the law.

The term “claimant” is found in 25 statutes in Title 34.<sup>89</sup> Twenty of these references are found in Chapter 15.<sup>90</sup> The term is not defined in any of these statutes. The Appellate Division expressly rejected any interpretation of N.J.S. 24:15-51 that incorporates medical providers into the existing claimant-for-compensation category.<sup>91</sup> Although undefined in Title 34, claimant for compensation has traditionally been understood to refer only to employees.<sup>92</sup> Further, Chapter 15 contains provisions that the Appellate Division noted, “clearly equate ‘claimant’ with ‘employee’.”<sup>93</sup> Thus, the term “claimant” as used in this Act does not include “medical providers” and necessitates the clarification of the statute of limitations for disputed medical claims arising under N.J.S. 34:15-15.

The proposed subsection f. of N.J.S. 34:15-15 is based on the discussion of this issue in *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565 (App. Div. 2019), *certif. granted*, 238 N.J. 30, (2019) and *certif. granted*, 238 N.J. 31, (2019) and *certif. denied*, 238 N.J. 57 (2019); 241 N.J. 112 (2020). This subsection has been modified to include a statute of limitations for medical provider claims. Prior to the 2012 amendment of this statute, the timeliness of medical-provider claims was governed by the general six-year statute of limitations in N.J.S. 2A:14-1.

The language in subsections f.(2)–(3) establishes a statute of limitations for disputed medical provider claims in workers’ compensation actions. The length of the statute of limitations, however, involves policy determinations best suited to the Legislature.<sup>94</sup> The draft language suggests a “phase-in” period to preserve the claims of medical providers who previously believed or had been advised that they had a longer period of time within which to file such claims.<sup>95</sup>

Workers’ compensation benefit payors are permitted “to direct injured, covered employees to receive non-emergency treatment from specified medical providers within whom the payor has a contractual agreement or mutual understanding as to what constitutes fair and reasonable fee for treatment.”<sup>96</sup> Where an express, or implied, contract exists the parties should be governed by the statute of limitations set forth in the contract or mutual understanding.

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<sup>89</sup> N.J. STAT. § 34:1A-1.6 (2020); N.J. STAT. § 34:1A-1.8 (2020); N.J. STAT. § 34:1B-21.2 (2020); N.J. STAT. § 34:11-56.8 (2020); N.J. STAT. § 34:11-66 (2020); N.J. STAT. § 34:15-7.2 (2020); N.J. STAT. § 34:15-12 (2020); N.J. STAT. § 34:15-15 (2020); N.J. STAT. § 34:15-28.2 (2020); N.J. STAT. § 34:15-33.3 (2020); N.J. STAT. § 34:15-34 (2020); N.J. STAT. § 34:15-41.1 (2020); N.J. STAT. § 34:15-43 (2020); N.J. STAT. § 34:15-50 (2020); N.J. STAT. § 34:15-51 (2020); N.J. STAT. § 34:15-64 (2020); N.J. STAT. § 34:15-79 (2020); N.J. STAT. § 34:15-111 (2020); N.J. STAT. § 34:15-120.2 (2020); N.J. STAT. § 34:15-120.4 (2020); N.J. STAT. § 34:15-120.12 (2020); N.J. STAT. § 34:15-120.13 (2020); N.J. STAT. § 34:15-120.18 (2020); N.J. STAT. § 34:15-120.23 (2020); N.J. STAT. § 34:15-128 (2020).

<sup>90</sup> *Id.* See n.39.

<sup>91</sup> *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565, 572 (App. Div. 2019).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* See also n.4 citing N.J. STAT. §34:15-7.2 (2020); N.J. STAT. §34:15-12(c)(23) (2020); N.J. STAT. §34:15-28.2 (2020); N.J. STAT. §34:15-33.3 (2020); N.J. STAT. §34:15-34 (2020); N.J. STAT. §34:15-41.1 (2020); N.J. STAT. §34:15-43 (2020); N.J. STAT. §34:15-50 (2020); and N.J. STAT. §34:15-64(a)(2)(a) (2020).

<sup>94</sup> See discussion *supra* at 7.

<sup>95</sup> See generally MO. ANN. STAT. § 287.140 (West 2021) (which explicitly establishes a statute of limitations for medical services rendered before July 1, 2013 and one for medical services rendered after July 1, 2013) and Cannon, *supra* note 36, at 2 (explaining that a phased-in approach “...is consistent with sound practice and still preserves the claims of providers who had previously believed or [had] been advised that they had a longer period [of time] within which to file such claims....”).

<sup>96</sup> Stryker, *supra* note 36, at 4. See, e.g. N.J. STAT. ANN. § 34:15-15 (West 2021).



**N.J.S. 34:15-51 Claimant required to file petition within two years; exceptions, contents, minors**

a. ~~(1) Every claimant for compensation under Article 2 of this chapter (R.S. 34:15-7 et seq.) shall, unless a settlement is effected or a petition filed under the provisions of R.S. 34:15-50, submit to the Division of Workers' Compensation a petition filed and verified in a manner prescribed herein or by regulation, within two years after the date on which the accident occurred, or in case an agreement for compensation has been made between the employer and the claimant, then within two years after the failure of the employer to make payment pursuant to the terms of such agreement; or in case a part of the compensation has been paid by the employer, then within two years after the last payment of compensation except that repair or replacement of prosthetic devices shall not be construed to extend the time for filing of a claim petition. A payment, or agreement to pay by the insurance carrier, shall for the purpose of this section be deemed payment or agreement by the employer.~~

(2) Unless a settlement is effected, or a petition filed under the provisions of R.S. 34:15-50, The a paper copy of the petition shall be filed and verified by the oath or affirmation of the petitioner and state:

(A) the respective addresses of the petitioner and of the defendant,

(B) the facts relating to employment at the time of injury,

(C) the injury in its extent and character,

(D) the amount of wages received at the time of injury,

(E) the knowledge of the employer or notice of the occurrence of the accident; and

(F) such other facts as may be necessary and proper for the information of the division and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto. A paper copy of the petition shall be verified by oath or affirmation by the petitioner. Proceedings on behalf of an infant shall be instituted and prosecuted by a guardian, guardian ad litem, or next friend, and payment, if any, shall be made to the guardian, guardian ad litem, or next friend.

(3) The division shall prepare and print forms of petitions and shall furnish assistance to claimants in the preparation of such petitions, when requested so to do.

b. For purposes of this Act, a petition, shall be filed:

(1) within two years after the date on which the accident occurred;

(2) within two years after the failure of an employer to make payment pursuant to the terms of an agreement for compensation has been made between the employer and the claimant;

(3) within two years after the last payment of compensation in a case in which a part of the compensation has been paid by the employer, except that the repair or replacement of prosthetic devices shall not be construed to extend the time for filing of a claim petition;  
or,

c. A payment, or agreement to pay by the insurance carrier, shall for the purpose of this section be deemed payment or agreement by the employer.

d. Proceedings on behalf of an infant shall be instituted and prosecuted by a guardian, guardian ad litem, or next friend, and payment, if any, shall be made to the guardian, guardian ad litem, or next friend.

~~The division shall prepare and print forms of petitions and shall furnish assistance to claimants in the preparation of such petitions, when requested so to do.~~

e. For purposes of this section, the term “claimant” shall not include medical provider or hospital service claims to which subsection f. of N.J.S. 34:15-15 applies.

### **Comments**

N.J.S. 34:15-51 was enacted as a single paragraph. It has been restructured and archaic language has been proposed for removal and replacement in an effort to promote the accessibility of the law.

The statute of limitations for disputed “medical-provider” claims is not governed by N.J.S. 34:15-51.<sup>97</sup> The proposed modifications to N.J.S. 34:15-15 would set forth the statute of limitations for disputed medical provider claims and clarify that such claims are not subject to the statute of limitations set forth in N.J.S. 24:15-51.

The addition of subsection e. is designed to link N.J.S. 34:15-15 and N.J.S. 34:15-51 and make it clear that medical providers are *not* to be considered “claimants” for purposes of the two-year statute of limitations applied to “claimants for compensation” in subsection a. of N.J.S. 34:15-51.

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<sup>97</sup> *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565, 572 (App. Div. 2019).