

To: New Jersey Law Revision Commission
From: Samuel M. Silver, Dep. Dir.
Re: Time for furnishing medical, surgical, and other treatment to an injured worker pursuant to N.J.S. 34:15-15
Date: November 08, 2021

MEMORANDUM

Project Summary

The “medical and hospital service” provision of the New Jersey Workers’ Compensation statute, N.J.S. 34:15-15, does not set forth a time within which an employer must furnish the medical treatment called for in that section.¹ The absence of a specified period within which medical treatment must be furnished is the issue raised for Commission consideration.²

Statute Considered

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

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....

* * *

Background

The New Jersey Workers’ Compensation statutes are a comprehensive statutory scheme “designed to establish a no fault system of compensation for workers who are injured or contract a disease in the course of employment.”³ Enacted in 1911, these statutes continue to serve as “a form of remedial legislation designed to relieve the injured employee of the burden of paying for [their] own medical care and to replace [their] lost wages.”⁴

¹ N.J.S. 34:15-15.

² The absence of a statutory time-frame in within which an employer must furnish medical treatment was brought to Staff’s attention via e-mail by Richard Rubenstein, Esq., Rothenberg Rubenstein Berliner & Shinrod, LLC, to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (Jul. 20, 2021, 4:46 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 Co-Chair of the Council of Safety and Health of New Jersey. He is a Certified by the Supreme Court of New Jersey as a Workers’ Compensation Trial Attorney, and a Fellow of the American College of Workers’ Compensation Attorneys. Mr. Rubenstein is the named author of the Lexis-Nexis Practice Guide to New Jersey Workers’ Compensation, in its 5th Edition. See <https://www.rbslawnj.com/About/Richard-B-Rubenstein.shtml> (last visited Sept 09, 2020).

³ *Fitzgerald v. Tom Coddington Stables*, 186 N.J. 21, 30 (2006) (quoting *Brock v. Pub. Serv. Elec. & Gas Co.*, 325 N.J. Super. 582, 588 (App.Div. 1999), *certif. denied*, 163 N.J. 775 (2000)).

⁴ *Id.* at 30-31.

The New Jersey judiciary has consistently held that New Jersey’s workers’ compensation statutes should be “given liberal construction in order that its beneficent [sic] purposes may be accomplished.”⁵ In addition to liberal construction, and consistent with the underlying humanitarian ideals, the workers’ compensation statutes have historically been liberally construed in favor of coverage.⁶

It is against this backdrop that a member of the public brought to the attention of the Commission the absence of a time frame within which an employer must provide medical treatment to an injured employee.⁷

Analysis

The New Jersey Workers’ Compensations statutes require an employer to furnish an injured worker with “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.”⁸

In *Benson v. Coca Cola, Co.*, an injured worker obtained medical treatment without first seeking authorization from the employer.⁹ The Court in *Benson* determined that if the employer refused or neglected to provide an employee with proper medical treatment, an employee may either file a claim petition, or request medical treatment from the employer and thereafter seek treatment at the employer’s expense.¹⁰ The *Benson* Court explained that the employer’s duty to provide adequate medical treatment is absolute.¹¹ The Court reasoned that the ability of the worker to choose their own physician is “offered by the employer itself in its refusal or neglect to comply with its obligation.”¹²

While N.J.S. 34:15-15 addresses the refusal and neglect of an employer to provide an injured employee with medical treatment, a situation may arise in which an employer has agreed to provide an injured employee with medical treatment but does not designate an authorized, competent treatment provider.¹³ Once a physician or course of treatment has been selected, an employer may request a second opinion.¹⁴ Absent from the statutory scheme is a definitive time beyond which an employer will be found to have unreasonably delayed the furnishing of

⁵ *Id.* at 30 (citing *Torres v. Trenton Times Newspaper*, 64 N.J. 458, 461 (1974)). See also *Benson v. Coca Cola Co.*, 120 N.J. Super. 60, 66 (App. Div. 1972) (citing *Close v. Kordulak*, 44 N.J. 589, 604 (1965) (finding that “it is now beyond cavil that the beneficent social purposes of workmen’s compensation legislation are to be reflected by the benefits of liberal construction in the petitioner’s favor”).

⁶ *Id.* at 31 (quoting *Cuna v. Bd. of Fire Comm’rs*, 42 N.J. 292, 298 (1964)).

⁷ See *Rubenstein supra* note 2.

⁸ N.J.S. 34:15-15.

⁹ 120 N.J. Super. 60, 62 (App. Div. 1972).

¹⁰ *Id.* at 64.

¹¹ *Id.* at 66.

¹² *Id.* at 65.

¹³ See *Rubenstein supra* note 2.

¹⁴ *Id.*

treatment.¹⁵ There does not appear to have been any case decided that determines what constitutes an unreasonable delay in furnishing treatment.¹⁶

A court may sanction an employer who fails to comply with the requirements of a Workers' Compensation statute.¹⁷ There are circumstances under which an employee may wish to make an application for sanctions predicated on the failure of the employer to "timely" provide them with medical treatment. Presently, there are impediments to doing so. First, such an application requires a plenary hearing that will delay the adjudication of the underlying case.¹⁸ Next, the employer may refuse to settle the substantive claim unless the petition for sanctions is withdrawn.¹⁹ Finally, there is no objective standard for what constitutes an unreasonable delay in furnishing treatment.²⁰

The absence of statutory or common law guidance on this issue creates a situation in which an employer may argue that a delay is not unreasonable because the statute does not define what is reasonable, and a reviewing court will not find precedent with which to assess what amount of time is reasonable.²¹ The injured employee remains untreated under such circumstances.

Pending Legislation

There is no pending legislation in New Jersey that concerns the issue raised in this Memorandum.

Conclusion

Staff requests authorization to conduct additional research to determine whether it would be useful to modify N.J.S. §34:15-15 to establish a time period within which an employer must furnish an injured worker with medical, hospital, surgical, and other treatment as appropriate.

¹⁵ Compare N.J. STAT. ANN. § 34:15-28.1 (West 2021) (providing that a delay or refusal in payment of temporary disability compensation of "30 days or more shall give rise to a rebuttable presumption of unreasonable and negligent conduct on the part of a self-insured or uninsured employer or an employer's insurance carrier.").

¹⁶ See *Rubenstein supra* note 2.

¹⁷ N.J. Stat. Ann. § 34:15-28.2a. – f. (West 2021).

¹⁸ E-mail from Richard Rubenstein, Esq., Rothenberg Rubenstein Berliner & Shinrod, LLC, to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm'n (Aug 23, 2021, 3:33 PM EST) (on file with the NJLRC).

¹⁹ See *Rubenstein supra* note 17.

²⁰ *Id.*

²¹ See generally *Id.*