

SPECIAL DELAWARE WORKERS' COMPENSATION ALERT

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45-Day Time Limit for Appealing Utilization Review Determinations Is Invalid

Christiana Care Health Services v. Cecil Palomino, et al., (DE Supreme Court Nos. 56,2012; 62,2012; and 63,2012-Decided April 11, 2013)

In an important and long awaited decision, the Delaware Supreme Court, in a three to two ruling, holds that the 45-day time limit for appealing an adverse Utilization Review Determination is invalid since it conflicts with the five-year statute of limitations on compensable claims.

This appeal involved three consolidated cases, and in each one, the claimants had suffered compensable injuries and the employers had challenged some of the medical treatment through the Utilization Review process. The Utilization Review Determinations found that portions of the medical treatment at issue were not compensable under the Healthcare Practice Guidelines. The claimants, through their counsel, filed petitions with the Board, and in each instance, those petitions were filed

after the 45-day time limit for doing so. Accordingly, the Board dismissed each petition as untimely. On appeal to the Superior Court, it was held that the 45-day time limit was invalid since it conflicts with the five-year statute of limitations contained in §2361.

The Supreme Court discussed §2361 of the Act, which provides that, in open compensable claims, no statute of limitations shall take effect until the expiration of five years from the time of the making of the last payment of compensation. The Court noted that in prior decisions it has emphasized that the statute unambiguously provides that no statute of limitations shall take effect until five years from the last payment of compensation benefits. In contrast, the Court pointed out that the 45-day time limit for appealing Utilization Review Determinations is only a regulation that was adopted by the Department of Labor on the recommendation of the Health Care

Advisory Panel. The Court reasoned that the broad language of the statute with the five-year limitation protects claimants from the preclusive effect of a regulation imposing a shorter time limitation. In essence, the Court held that, where, as here, a regulation conflicts with the statute, the statute must prevail. They rejected the argument advanced by the employers that the regulation did not foreclose all claims but only those specific claims dealing with the medical treatment being challenged.

The dissenting opinion pointed out that the majority holding gives a claimant five years to seek review of an adverse Utilization Review decision and contradicts the purpose of the Healthcare Practice Guidelines, which is the "prompt" resolution of claims, and also makes no practical sense in that there is no reasonable likelihood that a claimant's condition or the disputed treatment will remain static for five years. They also

reasoned that there is an important difference between the statute of limitations in §2361 and a time limit on appealing a regulatory body's decision, which is what they viewed the 45-day time limit as being.

Side Bar: The dissenting opinion makes the very practical argument that long before the running of a five-year statute of limitations in appealing UR decisions, the claimant will either go ahead with the treatment, will appeal the adverse decision or find other acceptable treatment. In either instance, the Utilization Review decision at that point will be of little consequence since the claimant would have obtained other services and thereby mooted the issue. The consensus among many members of the bar is that the Court's decision will result in some type of legislative action to create a shorter and more reasonable time limit on appealing adverse Utilization Review Determinations.

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