



May 12th, 2020

Nicole Richardson,
Department of Industrial Relations
Division of Workers' Compensation
1515 Clay Street, 18th floor
Oakland, CA 94612

SUBJECT: QME Regulations in Response to COVID-19.
File Number 2020-0504-01E

Dear Nicole Richardson:

California Coalition on Workers' Compensation (CCWC) have reviewed the proposed emergency regulations and propose the following comments for consideration.

The California Coalition on Workers' Compensation (CCWC) is an association of California's public and private sector employers that advocates for a balanced workers' compensation system that provides injured workers with fair benefits, while keeping costs low for employers. Our members include not only businesses of every size, but also cities, counties, schools and other public entities.

We do agree that regulations may be needed for telehealth overall and specifically as it applies to medical legal evaluations, in limited situations. However, we believe that regulations should proceed through the formal rulemaking process.

After review of the Emergency QME Regulations, we would like to point out the following concerns:

- The purpose of the regulations must be to further claims of the injured employees. Generating reports that do not further the workers' compensation claims, but only serve to generate incomplete reports for the sole purpose of creating income for the QME or AME, is a disservice to the injured employee and the employers of this state, who are already dealing with income loss and business closure during the pandemic.
- Section 78 (a) (1):
 - We support the ability of the QME to reschedule the evaluation for up to 90 days.
 - However, this should not be limited to any currently calendared in-person medical-legal appointment, but rather extended to any pending medical-legal evaluation appointment, whether currently calendared or newly scheduled, to eliminate unnecessary panel replacements.

- Section 78 (a) (2):
 - We strongly believe this section serves no benefit to the parties. It does not further the claim. It serves only to generate income for the QME and does not move the claim forward or resolve any issues. These services can be delayed until there is an actual physical evaluation that can move the claim forward. We understand the concerns over a backlog of evaluations post shelter-in-place; however, permitting evaluations under this section will not alleviate the need for the physical ‘face to face’ evaluations post any shelter-in-place order. Therefore, this section and its sequela do not reduce any backlog.

As stated above, the workers' compensation system exists for the benefit of the injured employee and their employer, providing medically necessary treatment to address workplace injuries and return the employee to gainful employment with the employer. Creating an income flow for medical-legal evaluators that do not further dispute resolution is not a goal of this system.

- **Given the above, we recommend that section 78(a)(2) be removed in its entirety.**
- Section 78 (a)(3):
 - We support the concept that a medical evaluation through telehealth should be available to resolve AOE/COE disputes. These evaluations are based on the mechanism of injury and whether the mechanism can be scientifically proven to have resulted in the claimed injury. A physical evaluation is not needed. If the QME is presented with opposing facts, they can issue a determination on AOE/COE under the differing sets of facts so that the Workers' Compensation Judge can make a final determination.
 - We do not support that a telehealth evaluation can address work restrictions or Temporary Total Disability status in all situations. For most physical injuries, an assessment must be made of the injured employee’s physical abilities to determine their actual abilities to perform their regular work. Without a physical evaluation, a determination would be based solely on subjective attestations of the injured employee without measurement of their actual abilities.

These limitations may not apply to internal or psychiatric evaluations but certainly, apply to musculoskeletal injuries. Leaving the determination solely to the QME will result in reports being generated that are not substantial evidence. To illustrate this, we point to the current selection process, involving a QME in an inappropriate specialty. While the QME is given the opportunity to recuse themselves, that does not occur. Rather the selected QME issues a report, noting the need for a specialist evaluation, thus doubling the costs without furthering the claim. **Therefore, specific limitation should be included barring the use of medical-legal telehealth evaluations for musculoskeletal injuries work restrictions and TTD disputes.**

- Section 78 (c)(1): Modifier 93 code
 - We support the modifier when an interpreter is used.
 - We do not support the application of this modifier where other circumstances exist that impair communication between the physician and the injured worker, which significantly increases the time needed to conduct the examination. If such circumstances exist, then

the telehealth medical-legal evaluation is not the appropriate mechanism to move this forward at that time; rather, the evaluations should be rescheduled. There is too much potential for abuse as these circumstances cannot be verified.

- We propose this section be re-drafted as follows:
 - (1) Modifier 93 code shall be used if an interpreter is needed at the time of interview, evaluation, or telehealth evaluation. Where this modifier is applicable, the value for the flat rate is modified by multiplying the normal value by 1.1. This modifier shall only be applicable to the flat rate.
- Section 36.7 (c)(3): Electronic Service:
 - We recommend that the unrepresented injured workers be afforded the opportunity to receive the Qualified Medical Legal report electronically. **As such, removal of this subsection will achieve that goal.**

We are available to answer any questions or provide additional information regarding these comments, at your convenience.

Respectfully,



Jason Schmelzer
California Coalition on Workers' Compensation

cc: George Parisotto, Administrative Director, Division of Workers' Compensation