| **QME ELECTRONIC SERVICE COMMENT CHART** | **RULEMAKING COMMENTS**  **45 DAY COMMENT PERIOD** | **NAME OF PERSON/ AFFILIATION** | **RESPONSE** | **ACTION** |
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| 36.7(a)(2) | Commenter recommends the addition of the following language at the end of the current subsection:  The parties may agree to more specific methods of electronic service, such as limiting service to electronic transmission only, or if electronic notification is chosen, an agreed upon location for downloading medical-legal reports and required documents.  Commenter notes that electronic service is defined under §36.7 as either service on a party or other person by way of either “electronic transmission” or “electronic notification”, and further requires there be an agreement to electronic service among the parties, and a written confirmation of such agreement.  Commenter opines that since not all computer systems function the same, security and/or access issues may arise for a receiving party/person’s computer network, whereby the receiving party/person’s computer network is at risk of possible phishing attacks and exposure to malware. Commenter recommends allowing parties to further agree to a more specific method of electronic service that is compatible with their current computer system in order to curb the risk and ease these concerns. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  December 16, 2021  Written Comment | The AD intends to amend tile 8 California Code of Regulations section 1 to include and expand upon the definition of electronic transmission and electronic address. The AD opines that this can best be addressed in regulation section 1.  This regulation is the subject of the service of Medical-Legal reports. Section (a)(2) provides for agreement by the parties to the service in electronic format. Service of any other documents is not the subject of this rulemaking.  AD disagrees. California Code of Civil Procedure section 1010.6 provides a timeline for receipt of service. Regulation 36.7 is consistent with the California Code of Civil Procedure section 1010.6. In addition, nothing in the text of the regulation prevents the parties from agreeing to more specific methods of electronic service. | None at this time. |
| 36.7(a)(3) | Commenter recommends that following revised language:  *For purposes of electronic service, the medical-legal report or other papers must be transmitted or the electronic notification must be sent to an electronic address maintained by the person or entity on whom it is served, using the most recent electronic address provided to the physician by the party who consented to accept service electronically.*  Commenter opines that this section, as currently written, does not address electronic notification, as defined under this regulation, and contradicts its definition. For service by electronic notification, no report or other papers are transmitted. Instead, a message is sent advising the receiving party that the documents are available by a URL. Commenters states that her recommended revised language clarifies this. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  December 16, 2021  Written Comment | The AD disagrees. The AD opines that electronic service or electronic notification are properly addressed by California Civil Code of Procedure section 1010.6 and is consistent with this regulation. DWC intends to make additions to title 8 California Code of Regulations section 1 to further expand on definitions of electronic service and electronic transmission. | None at this time. |
| 36.7(a)(4) | Commenter opines that this subsection, as written is silent in addressing potential access issues with documents electronically served by either “electronic transmission” or “electronic notification,” and what the receiving party’s remedy is (e.g. access issues with the hyperlink provided by the sending party). Commenter states that it is unclear what the receiving party can or must do to resolve the issue and requests that the Division address what the remedy is for this type of problem. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  December 16, 2021  Written Comment | The AD disagrees. If there is a dispute the parties can seek assistance from the Workers Compensation Appeals Board. | None |
| 36.7(d) | Commenter recommends the addition of the following language to this subsection:  (5) The agreement to electronic service may be revoked in writing at any time by the serving or receiving parties.  (6) The receiving party/entity shall have the right to refuse electronic service from a sending party/entity when the sender’s network has been compromised. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  December 16, 2021  Written Comment | The AD disagrees. The AD has amended section (a)(3) to include: “A party whose electronic address has changed has the obligation to file a notice of change of address with the physician and all parties.”  The regulation provides for agreement to service at the discretion of the parties. | Update made to (a)(3).  No other action. |
| 36.7(a)(1)(A) | Commenter recommends inserting a definition for electronic address as follows:  For purposes of this section, ‘electronic address’ means an email address or fax number.  Commenter recommends that this language come first under (A) and the current language be retained and referenced as (B), (C),(D). | Christian Groneberg, Paralegal  Thomas, Lyding, Cartier, Arnone & Daily, LLP  December 17, 2021  Written Comment | The AD opines this can best be addressed through title 8 California Code of Regulations section 1. Therefore, this is subject to a separate rule making and not the subject of this rule making. | None at this time. |
| 36.7(a)(4) | Commenter recommends adding the following language at the end of this subsection:  “..in addition to any other applicable time extension provided by law.”  Commenter states that 8 CCR section 10605 would already extend that period of time by 5 calendar days. Commenter has had discussions with the DWC Medical unit regarding this and was advised that it would be up to the WCAB to clarify. | Christian Groneberg, Paralegal  Thomas, Lyding, Cartier, Arnone & Daily, LLP  December 17, 2021  Written Comment | The AD disagrees. The time for service is defined in California Code of Civil Procedure section 1010.6 and is consistent with the language of this regulation. | None |
| General Comment – Transmission Security | Commenter recommends that the DWC make revisions to proposed regulation, section 36.7 to require encrypted technology for ALL means of electronic service of med legal reports as interception of HIPAA protected medical information will predictably occur without this security protection.  Commenter acknowledges that making this section permanent will make serving medical reports easier for QMEs, she opines that DWC has not given any consideration in the proposed draft to the significant long term privacy considerations with the electronic transmission of HIPAA protected medical information through unencrypted emails.    The following is an excerpt from a State Bar Ethics Opinion on Confidentiality and Technology which supports our concerns on this issue:  “Due to the ever-evolving nature of technology and its integration in virtually every aspect of our daily lives, attorneys are faced with an ongoing responsibility of evaluating the level of security of technology that has increasingly become an indispensable tool in the practice of law. The Committee’s own research – including conferring with computer security experts – causes it to understand that, without appropriate safeguards (such as firewalls, secure username/password combinations, and encryption), data transmitted wirelessly can be intercepted and read with increasing ease.”    Commenter references the following link to the full State Bar Opinion, of which the link does not open:  <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:5cb74ca1-c379-4d8e-901c-fae39fb635de>    Commenter also provides the following link to a recent [PC magazine article on the importance of using encrypted technology](https://www.pcmag.com/picks/the-best-email-encryption-services) for the electronic transmission of confidential information:  https://www.pcmag.com/picks/the-best-email-encryption-services | Diane Worley  Executive Director  California Applicants’ Attorneys Association (CAAA)  December 17, 2021  Written Comment  December 17, 2021  Oral Comment | The AD disagrees. Encrypted technology and HIPAA compliance is outside the scope of this rulemaking. This rulemaking does not change any statutory, regulatory or professional ethical obligations of the parties to comply with privacy laws. | None. |
| 36.7(a)(2) | Commenter recommends that a process be put in place for the parties to consent to electronic service to implement this section. Commenter opines that this can be an addition to the existing QME request form to allow the parties to opt into electronic service consistent with this section. | Diane Worley  Executive Director  California Applicants’ Attorneys Association (CAAA)  December 17, 2021  Written Comment  December 17, 2021  Oral Comment | The AD disagrees. Any process change on DWC forms would require a separate rulemaking therefore this is not the subject of this rulemaking. | None |
| General Comment | Commenter supports the continuing effort by the Division to improve the efficiency of the workers’ compensation system by making the service of medical-legal reports more convenient for all parties involved and to speed up the delivery of medical-legal reports to the interested parties and is in favor of the proposal to make permanent the emergency regulation regarding electronic delivery of medical-legal reports.  In particular, commenter supports the proposal to strike the earlier language precluding electronic service on unrepresented parties. Commenter states that the majority of medical-legal evaluation reports are generated in cases involving unrepresented injured workers. If the injured worker is in agreement to receive a copy of the report electronically, this choice should be supported and not prohibited. Likewise, unrepresented employers should be permitted to choose to receive copies of medical-legal reports electronically. Permitting both sides to engage in electronic communication in instances such as this helps to move the system forward into a more efficient method of functioning overall. | Ellen Sims Langille, General Counsel  California Workers’ Compensation Institute (CWCI)  December 17, 2021  Written Comment | The AD agrees. | None |
| 36.7(a) | Commenter recommends that new language be added consistent with Rules of Court §2.251(g)(1) such that, in the event of a change of address under 8 CCR §36.7(a), a party whose email address has changed has the obligation to file a notice of change of address with the physician and serving notice electronically on all other parties. | Ellen Sims Langille, General Counsel  California Workers’ Compensation Institute (CWCI)  December 17, 2021  Written Comment | The AD agrees. Please see update to section (a)(3). | Update made to section (a)(3). |
|  | Commenter supports CAAA’s recommendation at the December 17, 2021, Public Hearing that reference be included regarding HIPPA compliance. While physicians are already under obligation to ensure appropriate protections are in place, reiteration of that requirement in these electronic service regulations is appropriate. | Ellen Sims Langille, General Counsel  California Workers’ Compensation Institute (CWCI)  December 17, 2021  Written Comment | The AD disagrees. Encrypted technology and HIPAA compliance is outside the scope of this rulemaking. This rulemaking does not change any statutory, regulatory or professional ethical obligations of the parties to comply with privacy laws. | None |
| General Comment – Transmission Security;  36.7(a)(2) | Commenter supports the comments made by Diane Worley of CAAA regarding transmission security and agreement to consent to electronic service of documents. | Patrick Curry  Simple Exam  December 17, 2021  Oral Comment | The AD disagrees. Encrypted technology and HIPAA compliance is outside the scope of this rulemaking. This rulemaking does not change any statutory, regulatory or professional ethical obligations of the parties to comply with privacy laws. | None |