

BULLETIN

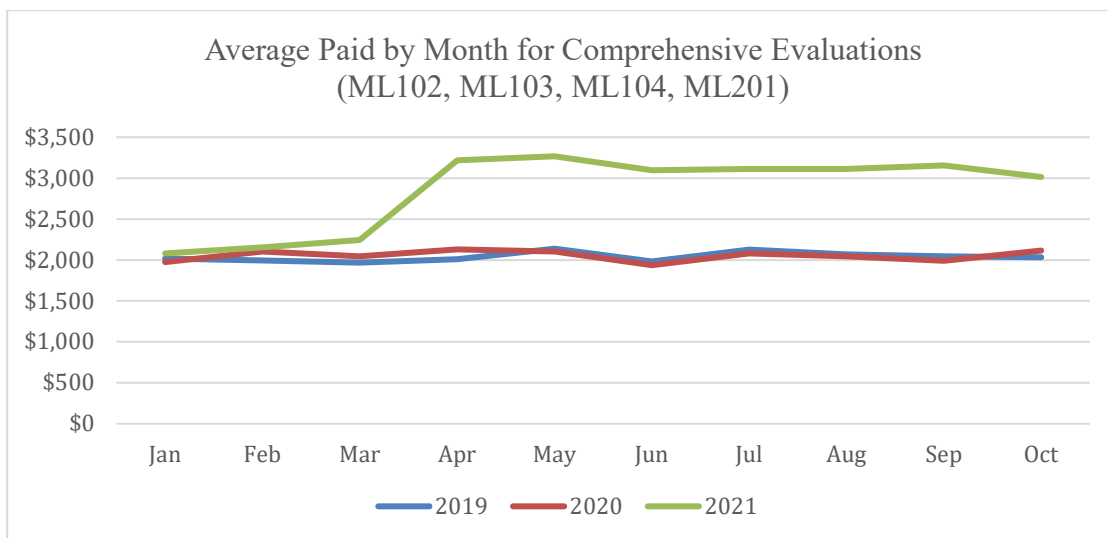
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Payments for medical-legal services used to resolve medical disputes over compensability issues in California work injury claims have risen sharply under the revised Medical-Legal Fee Schedule (MLFS) that took effect last year according to a new CWCI study which finds that the increase in total med-legal fees in the first 7 months after the schedule took effect far exceeded the 25% increase anticipated by the Division of Workers' Compensation (DWC).

In April 2021, after more than 2-1/2 years of development, California implemented a revised MLFS to replace the outdated schedule that had been in effect since 2006. The new schedule made fundamental changes to the payment formulas for med-legal evaluations and report services, eliminating the varying payments for "basic" (ML102) and "complex" (ML103) comprehensive evaluations, and time-based payments for evaluations involving "extraordinary circumstances" (ML104), and replacing them with a single code (ML201) for which forensic physicians are paid a single, flat fee, with additional payments of \$3 per page for record reviews exceeding 200 pages (MLPRR), and time-based payments for sub rosa video reviews (ML205). The new schedule continues to provide additional fees for evaluations performed by an Agreed Medical Evaluator (AME), or those involving an interpreter, and expanded fee multipliers to certain medical specialists. CWCI's new study compares the utilization and reimbursement of medical-legal services rendered before and after the new schedule's April 1, 2021 effective date, using med-legal data from accident year 2015 through accident year 2021 claims, with service dates limited to January through October of each year to account for the timing of billing and payment.

Focusing on the payment amounts, the author of the study calculated and compared the average payments for comprehensive evaluations on a month-by-month basis. Average payments for the pre-April 2021 services were weighted to account for the variable amounts that were paid based on complexity (ML102, ML103, ML104). The post-April 2021 comprehensive evaluations included the total costs associated with the evaluation, including any record review add-on (MLPRR). The total costs for all calculated averages included fee multipliers (i.e., interpreter services required, service by an AME, or a psychiatrist, psychologist, or a toxicology examination). As shown in the chart below, in the first 7 months under the new schedule (April through October 2021), average payments for comprehensive evaluations, which accounted for 52.5 percent of medical-legal services during this period, increased by 52.9 percent compared to the average amounts paid during the same April through October time period in 2019.



Replacing the three levels of evaluations that ranged from basic to extraordinary with a single comprehensive evaluation reimbursed at a flat fee of \$2,015 may have had the biggest impact on the average payment amounts. Under the new MLFS, basic evaluations, which had been billed under ML102, accounted for approximately 40 percent of evaluations that were rolled into the new comprehensive service (ML201). The data show the flat fee payment for these services increased by 222 percent. At the same time, the more complex evaluations which had been billed under ML103, accounted for 18 percent of the new ML201 evaluations, and payments for these more complex services increased by 115 percent. The new per-page review of records fee also factored into the increase in payments; adding an average of \$1,917 and a median of \$819 to the \$2,015 payment flat fee for comprehensive evaluations.

With the per-page review of records fee serving as a proxy for the level of complexity, the new fee schedule appears to result in as much variability in payments as the previous fee schedule, which had a time-based payment for services deemed to be extraordinary. The study sample included many medical-legal services for which significant amounts were paid under the 2006 fee schedule's time-based (ML104) fee calculation, including a March 2021 service for which \$69,500 was paid, as well as other examples of evaluations paid under the new MLFS where the number of pages reviewed far exceeded the base number provided in the schedule, triggering significant additional per page fees for comprehensive (ML201), follow-up (ML202), and supplemental (ML203) reports. For example, one ML201 report from July 2021 involved a review of 13,412 pages, resulting in a per-page review payment of \$40,236 in addition to the \$2,720.25 flat fee that included a 35 percent increase for an AME.

To address the prevalent use of supplemental reports, the new MLFS expanded the procedure description for ML203 reports, disallowing fees for reports that address issues or medical records that should have been reviewed and addressed in the preceding comprehensive report. It is too early to fully assess the impact of the preclusion on supplemental report payments.

As for how effectively the new MLFS has helped to attract and retain Qualified Medical Evaluators (QMEs) to provide medical legal services, DWC's database of certified QMEs shows that after edging down slightly in 2020, the pool of physicians rose slightly in 2021, the same year the new schedule took effect. Prior CWCI research from 2018 found that the number of QMEs fell sharply from 3,239 in 2012 to 2,578 in 2017, but the new study notes that 2,571 QMEs were listed in DWC's database for 2019, confirming that there was little change in the QME population from 2017 to 2019. The latest figures also show that the number of QMEs declined 3.2 percent to 2,489 evaluators in 2020, but then rebounded to 2,554 evaluators in 2021, as 211 new physicians were certified as QMEs, while only 18 became inactive. Although there were hopes that increased reimbursement for physicians specializing in toxicology or oncology (a 50 percent multiplier added to the flat fee) would encourage their participation in the system, early results have not borne that out, as most of the newly certified QMEs are orthopedic surgeons. The breakdown by provider medical specialty shows that the use of orthopedic specialists remains high, as they rendered 53 percent of all medical-legal services in 2021, a result that was not surprising as musculoskeletal injuries continue to represent the vast majority of conditions evaluated by QMEs last year.

CWCI will continue to monitor the utilization and cost of med-legal services under the new MLFS in future research as more developed data become available. In the meantime, the current study, with additional details, analyses, and graphics, has been released in a Research Update Report, "An Early Look at the Impact of the New Med-Legal Fee Schedule." CWCI members and research subscribers can access the report by logging in to <https://www.cwci.org>, while others can purchase the report at www.cwci.org/store.html. CWCI will also conduct a half hour webinar followed by a Q&A session (free to CWCI members, \$75 for non-members) on Wednesday, July 27 at 10 a.m. (Pacific) to review the MLFS changes and results of the study. For details or to register for the webinar, click [here](#).

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