**DWC – Proposed QME Emergency Regulation in Response to COVID-19**

**§ 78** **QME Emergency Regulation in Response to COVID-19**

(a) During the period that this emergency regulation is in effect a QME, AME, or other medical-legal evaluation may be performed and remunerated as follows:

1. A QME or AME may reschedule in-person medical-legal appointments currently calendared. When a currently calendared in-person medical-legal appointment is rescheduled, the physician shall reschedule the evaluation to take place within 90 days after the date that both the statewide stay-at-home order limiting travel outside one’s home, and any similar local order in the jurisdiction where the injured worker resides or the visit will occur, if applicable, are lifted; or
2. A QME or AME may provide a record review and injured worker electronic interview summary report. The physician may interview the injured worker either by telephone or by any form of video conferencing. Once the statewide stay-at-home order, and any similar local order in the jurisdiction where the visit will occur, are lifted, the QME may then schedule a face-to-face evaluation taking all necessary precautions.
3. The QME or AME shall schedule the electronic interview appointment by sending notice of the appointment with the information necessary for the injured worker to make the telephone call or initiate the videoconferencing for the appointment. The notice shall contain all the information ordinarily provided by the form 110 in addition to the information to complete the telephone or videoconference connection. The notice of electronic interview shall be transmitted in the manner required by 8 CCR section 34(a). Upon service of the notice of electronic interview, the parties to the action shall provide the QME or AME with the records for review at least 10 days prior to the scheduled appointment and in accordance with the provisions of Labor Code section 4062.3.
4. Fees payable for the record review and injured worker interview summary report shall be charged at a flat rate of $650.00 plus record review as follows: The fee includes review of 200 pages of records that were not reviewed as part of a prior comprehensive medical-legal evaluation, a prior follow-up medical-legal evaluation, or a prior supplemental medical-legal evaluation. Review of records of 201 pages to 1700 pages that were not reviewed as part of a prior comprehensive medical-legal evaluation, a prior follow-up medical-legal evaluation, or a prior supplemental medical-legal evaluation, shall be reimbursed at the rate of $3.00 per page. Review of records that were not reviewed as part of a prior comprehensive medical-legal evaluation, a prior follow-up medical-legal evaluation, or a prior supplemental medical-legal evaluation, in excess of 1700 pages shall be reimbursed at the rate of $2.00 per page.
5. Fees payable for a face-to-face evaluation after the interview and record review report, provided that the record report has been served, are payable at a flat rate of $1316.25 and include all records previously reviewed. If additional records are provided that were not previously provided either as part of the record review report and interview, or at a prior follow-up medical-legal evaluation, or a prior supplemental medical-legal evaluation, review of those records shall be reimbursed at the rate of $2.00 per page.
6. A QME or AME may complete a medical-legal evaluation through telehealth when a physical examination is not necessary and all of the following conditions are met:
7. The injured worker is not required to travel outside of their immediate household to accomplish the telehealth evaluation; and
8. There is a medical issue in dispute which involves whether or not the injury is AOE/COE (Arising Out of Employment / Course of Employment), or the physician is asked to address the termination of an injured worker’s indemnity benefit payments or address a dispute regarding work restrictions; and
9. There is agreement in writing to the telehealth evaluation by the injured worker, the carrier or employer, and the QME. Agreement to the telehealth evaluation cannot be unreasonably denied. If a party to the action believes that agreement to the telehealth evaluation has been unreasonably denied under this section, they may file an objection with the Workers’ Compensation Appeals Board, along with a Declaration of Readiness to Proceed to set the matter for a hearing;
10. The telehealth visit under the circumstances is consistent with appropriate and ethical medical practice, as determined by the QME; and
11. The QME attests that the evaluation does not require a physical exam.
12. Fees payable for a telehealth evaluation and report pursuant to subdivision (3) of this emergency regulation shall be charged at a flat rate of $2015.00 plus record review as follows: The fee includes review of 400 pages of records that were not reviewed as part of a prior comprehensive medical-legal evaluation, a prior follow-up medical-legal evaluation, or a prior supplemental medical-legal evaluation. Review of records of 401 pages to 1700 pages that were not reviewed as part of a prior comprehensive medical-legal evaluation, a prior follow-up medical-legal evaluation, or a prior supplemental medical-legal evaluation shall be reimbursed at the rate of $3.00 per page. Review of records that were not reviewed as part of a prior comprehensive medical-legal evaluation, a prior follow-up medical-legal evaluation, or a prior supplemental medical-legal evaluation in excess of 1700 pages shall be reimbursed at the rate of $2.00 per page.
13. Any face-to-face evaluation that occurs within nine (9) months of a telehealth evaluation pursuant to subdivision (3) shall be billed at a flat rate of $503.75 plus record review as follows: The fee includes review of 200 pages of records that were not reviewed as part of a prior comprehensive medical-legal evaluation, a prior follow-up medical-legal evaluation, or a prior supplemental medical-legal evaluation. Review of records of 201 pages to 1700 pages that were not reviewed as part of a prior comprehensive medical-legal evaluation, a prior follow-up medical-legal evaluation, or a prior supplemental medical-legal evaluation shall be reimbursed at the rate of $3.00 per page. Review of records that were not reviewed as part of a prior comprehensive medical-legal evaluation, a prior follow-up medical-legal evaluation, or a prior supplemental medical-legal evaluation in excess of 1700 pages shall be reimbursed at the rate of $2.00 per page.
14. For purposes of evaluations pursuant to subdivision (3) of this emergency regulation, telehealth means remote visits via video-conferencing, video-calling, or similar such technology that allows each party to see the other via a video connection.
15. Record review means the review by a physician of documents sent to the physician in connection with a medical-legal evaluation or request for report. The documents may consist of medical records, legal transcripts, medical test results and or other relevant documents. For purposes of record review, a page is defined as an 8 ½ by 11 or 8 ½ by 14 single sided document, chart or paper, whether in physical or electronic form.
16. Modifiers may apply to the flat rate fees that are billable under this emergency regulation. No modifiers shall be applied to “per page” record review charges. The flat rate fees may be modified as follows:
17. Modifier 93 code shall be used if an interpreter is needed at the time of interview, evaluation or telehealth evaluation, or other circumstances exist that impair communication between the physician and the injured worker, which significantly increases the time needed to conduct the examination. This modifier code requires a description of the circumstance and the increased time required for the examination as a result. 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.
18. Modifier 94 code shall be used for an evaluation performed by an Agreed Medical Evaluator. Where this modifier is applicable, the value of the procedure is modified by multiplying the normal value by 1.25. If modifier ~~-~~93 is also applicable, then the value of the procedure is modified by multiplying the normal value by 1.35. This modifier shall only be applicable to the flat rate.

(d) During the time this regulation is in effect, section 31.3 (e) of title 8 of the California Code of Regulations, is suspended and the following is effective:

(1) If a party with the legal right to schedule an appointment with a QME is unable to obtain an appointment with a selected QME within 90 days of the date of the appointment request, that party may waive the right to a replacement QME in order to accept an appointment that is no more than 120 days after the date of the party's initial appointment request. When the selected QME is unable to schedule the evaluation within 120 days of the date of that party's initial appointment request, either party may report the unavailability of the QME and the Medical Director shall issue a replacement pursuant to section 31.5 of title 8 of the California Code of Regulations upon request, unless both parties agree in writing to waive the 120-day time limit for scheduling the initial evaluation.

(e) During the time this regulation is in effect, all of the time periods enumerated in section 38 of title 8 of the California Code of Regulations are extended by a period of 15 days.

(f) During the time this regulation is in effect, section 34(b) of title 8 of the California Code of Regulations is suspended and the following is effective:

The QME shall schedule an appointment for the first comprehensive medical-legal evaluation which shall be conducted at a medical office listed on the panel selection form or any office listed with the Medical Director provided there is agreement by the parties. Any subsequent evaluation appointments may be performed at another medical office of the selected QME if it is listed with the Medical Director and is within a reasonable geographic distance from the injured worker’s residence.

(g) Upon the lifting or termination of Governor Gavin Newsom’s Executive Order N-33-20, and when there is no longer any statewide stay-at-home order, or any similar local applicable order in the jurisdiction, QME evaluations may take place under the provisions of the non-emergency QME regulations and the parties may comply with all timeframes, billing and reporting requirements under the non-emergency regulations.

(h) Nothing in this emergency regulation is intended to encourage or to authorize any individual, group, or business to violate any provision of Governor Gavin Newsom’s Executive Order N-33-20 and related stay-at-home and social distancing protocols, or any similar such orders applicable in local jurisdictions..