| ASSIGNMENT OF QME EVALUATION PROCEDURES | RULEMAKING COMMENTS45 DAY COMMENT PERIOD | NAME OF PERSON/AFFILIATION | RESPONSE | ACTION |
| --- | --- | --- | --- | --- |
| 43.3(a)(2)(B) | Commenter requests that the Division not strike from this subsection the following sentence:Agreement to the telehealth evaluation cannot be reasonably 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 hearing.Commenter opines that all parties should have the ability to appeal a denial, particularly if the carrier denies the remote health evaluation. Commenter recommends that if agreement cannot be met by the parties, each should state why this cannot be accomplished.Commenter notes that the QME attests in writing that the evaluation does not require an in person physical exam. Commenter requests that this be removed and that a remedy be provided is an in-person exam is required. Commenter requests that the DWC consider the following:* If an in person exam is warranted, does the applicant require a second exam?
* Would the first QME be voided?
* Who pays for the two exams?
 | Timur Durrani, MDSeptember 30, 2022Written Comment | The Administrative Director Disagrees. This language was removed as it is considered repetitive when the statute is clear.The Appeals Board has jurisdiction to adjudicate compensation claims and disputes related thereto. Labor Code section 5300 and 5301. Therefore, the parties continue to have the right to seek the assistance of the WCAB. The Administrative Director Disagrees. The QME is responsible for the examination and reporting in compliance with the AMA Guides, Labor Code and Regulations. The assignment of the panel and or a replacement panel is not the subject of this rulemaking.  | None |
| General Comment | Commenter has read the proposed revised regulations and is supportive. Commenter states that this is a good step forward consistent with reality on the ground. Commenter opines that moving forward all communications must be electronic and that there is too much paper waste and claims of non-receipt by carriers/parties. | Mark H. Hyman, MDOctober 3, 2022Written Comment | The Administrative Director agrees. Electronic Service and Communications is not the subject of this rulemaking.  | None |
| General Comment | Commenter supports making the following changes permanent:* Continuing Telehealth Evaluation option
* Extension of scheduling a QME by an additional 30 days
* Allow a QME evaluation at any site listed with the DWC with the agreement of both parties.
 | Andrea R. Bates, MDOctober 6, 2022Written Comment | The Administrative Director agrees. | None |
| 46.3 | Commenter is a psychiatrist/QME and supports allowing remote Medical-Legal evaluations on a permanent basis.Commenter states that his experience with remote evaluation, allowed on an emergency basis for the past two years, has been overwhelmingly positive. Commenter states that remote evaluations are less burdensome for both applicants and QMEs, at least for psychology and psychiatry, with no decrement in clinical validity.  | Gregory J. Firman MDOctober 10, 2022Written Comment | The Administrative Director agrees.  | None.  |
| General Comment | Commenter opines that since the CA Physician Fee Schedule is based on RBRVS used in the Medicare Physician Fee Schedule that there is no real reason not to extend telehealth for the CA Workers’ Compensation system through the end of 2024, as the House of Representatives voted overwhelmingly (416-12) to extend Medicare Telehealth Flexibilities. Commenter states that Medicare is the stellar of reasonableness and necessity of medical treatment, of which the CA workers’ compensation has been reliant and therefore he recommends following Medicare’s access to telehealth guiding principles.  | Jun C. Nolasco, FSPsy, MSAOMOctober 24, 2022 Written Comment | Noted.  | None.  |
| General Comment | Commenter states that telehealth should be permanent. | Leon OzeranOctober 24, 2022Written Comment | The Administrative Director agrees. | None. |
| General Comment | Commenter strongly supports the implementation of the permanent adoption of remote telehealth, extended appointment setting periods and the performance of evaluations in any listed office. Commenter opines that these proposed changes will help QME’s provide better access to evaluations for applicants.  | Shereen Tabibian, Psy.D, QMEOctober 25, 2022Written Comment | The Administrative Director agrees. | None. |
| General Comment | Commenter states that the DWC should absolutely make the telehealth regulations permanent. In the field of psychology/psychiatry commenter opines that it has increased the efficiency and accessibility of doing QME evaluations without decrement in validity of results. Commenter states that it also results in a significant cost savings. As an example, commenter is scheduled to do a QME Evaluation of an injured worker who has retired and relocated to Florida. Before telehealth the injured worker would have had to fly back to California for his QME evaluations. Now it can be done remotely saving travel cost as well as time.  | William W. Deardorff, PhD, ABPP, QMEOctober 30, 2022Written Comment | The Administrative Director agrees. | None. |
| General Comment | Commenter supports and thanks the DWC for proposing to adopt telehealth as a permanent regulation to allow remote evaluations if no physical exam is needed. Commenter opines that the risk of exposure to various dangerous organisms is too great, especially if one is immunocompromised, and can also endanger family members.Commenter states that his telehealth evaluations are just as comprehensive and thorough as in person evaluations.  | Sheldon Bloch MDNovember 8, 2022Written Comment | The Administrative Director agrees. | None. |
| General Comment | Commenter thanks the DWC for this proposal to make QME telehealth a permanent option in California.Commenter states that since the summer of 2020 and continuing throughout the pandemic, he has completed many telehealth (remote) QME evaluations. Commenter states that these are probative reports with most cases involving musculoskeletal injuries and both parties where both parties have agreed to remote evaluation. Commenter opines that telehealth platforms are an ideal way to interview and injured worker and that his observational “physical exams” are supportive of his reports. Commenter obtains consent for the applicants to include computer screenshots with annotations, demonstrating functional abilities and any musculoskeletal asymmetries. He states that in his experience applicants are very cooperative, provide full effort, and follow simple directions for positioning a phone or laptop camera. Commenter states that the Mayo Clinic recently advocated the use of telehealth for musculoskeletal/orthopedic care and that he has adapted this approach to his remote QME evaluations. [Commenter submitted a special article entitled “The Telemedicine Musculoskeletal Examination” issued by the Mayo Clinic in August 2022 – copy is available upon request.]Commenter states that a telehealth practitioner can perform an adequate exam and still utilize the AMA Guides tables. Commenter opines that many of the AMA Guides methods do not require precise hands-on measuring to conclude an impairment rating. He states that he is very familiar with chapters 8, 13, 15, 16, 17 and 18. There are many examples of impairment ratings that utilize historical functional factors, or imaging results, instead of precise angular joint measurements.Commenter opines that the advantage of QME telehealth services include:* Convenient and safer for the applicant, including reduced travel
* Convenient and safer for the QME, including reduced travel
* Cost savings for the applicant, and reduced medical office expenses
* May attract more physicians from around the state to participate as QMEs
* Would help take the heavy demand for QME services
 | Louis Rosen, DO, QME – Physical Medicine & RehabilitationNovember 10, 2022Written Comment | The Administrative Director agrees. | None. |
| General Comment | Commenter supports adoption of the proposed regulations.Commenter opines that remote health Medical-Legal evaluations have proven to play an important role in increasing access for injured workers who need and require timely evaluations. Commenter notes that these proposed regulations also allow flexibility should there continue to be health issues that make it unsafe or impossible for injured workers to be evaluated in-person.Commenter notes that these proposed regulations also extend the time to schedule a medical legal evaluation by an additional 30 days and includes other important clarifications. | Kim Stone, JDCalifornia Orthopaedic Association November 15, 2022Written Comment | The Administrative Director agrees. | None.  |
| 31.3 | Commenter support the extension of time to schedule an appointment from sixty (60) days to ninety (90) days and ninety (90) days to one hundred twenty (120) days. The proposed time periods better reflect the scheduling reality for many QMEs and will reduce the number of replacements issued. We also support the addition of “subsequent” evaluations to this section. | Sara Widener-Brightwell, General CounselCalifornia Workers’ Compensation Institute (CWCI)November 15, 2022Written Comment | The Administrative Director agrees. | None.  |
| 34(b) | Commenter recommends the following revised text:(b) The QME shall schedule an appointment for the first comprehensive medical-legal examination 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 written agreement by the parties to use a different office listed with the Medical Director that is within a reasonable geographic distance from the injured worker’s residence. 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.Commenter recommends adding “that is within a reasonable geographic distance from the injured worker’s residence” to the first sentence to make clear that the first comprehensive medical-legal evaluation should also be performed at a geographically reasonable location. | Sara Widener-Brightwell, General CounselCalifornia Workers’ Compensation Institute (CWCI)November 15, 2022Written Comment | The Administrative Director disagrees. The parties must agree to the change of location and office location therefore reasonable geographic distance is not needed as it is anticipated that the parties would not agree if the geographic distance is not reasonable.  | None. |
| 46.3(a) | Commenter recommends the following revised text:1. A remote health evaluation by a QME, AME, or other medical-legal evaluation may be performed through the use of electronic means of creating a virtual meeting between the physician and the injured worker where both parties can ~~visually~~ see and hear each other and may not be in the same physical space or site.

Commenter recommends the deletion of “visually” to avoid redundancy. | Sara Widener-Brightwell, General CounselCalifornia Workers’ Compensation Institute (CWCI)November 15, 2022Written Comment | The Administrative Director disagrees. The language provides clarity.  | None.  |
| 46.3(a)(2) | Commenter supports changing “telehealth” to “remote health” for consistency. | Sara Widener-Brightwell, General CounselCalifornia Workers’ Compensation Institute (CWCI)November 15, 2022Written Comment | The Administrative Director agrees. | None.  |
| 34(a) | Commenter notes that the DWC’s Initial Statement of Reasons advises the amendment made to subsection (a) is meant to *“allow electronic service of the form 110 consistent with regulation 36.7.”* However, this proposed change does not appear to be consistent with §36.7.Section 36.7 outlines the electronic service of medical-legal reports by medical evaluators, which includes service of “all documents required by section 36…”. The appointment notification form is not specified under §36.7 or §36. Thus, it is unclear if the electronic service of medical-legal reports under §36.7 should be interpreted to include the electronic service of the appointment notification form and if the parties’ agreement to the electronic service of a medical-legal report should expressly include the electronic service of the appointment notification form.Commenter states that clarification is needed as to how the medical evaluator should complete the Declaration of Service section of the appointment notification form where electronic service is currently not an option specified under “Method of service”.Commenter requests clarity of DWC’s intent and proposed change to allow the electronic service of the appointment notification form. | Andrea GuzmanClaims Regulatory DirectorState Compensation Insurance Fund (SCIF)November 15, 2022Written Comment | This provision has been withdrawn and will go through a 15 day comment period to be updated to provide clarity. This provision has been withdrawn and will go through a 15 day comment period to be updated to provide clarity.  | WithdrawnWithdrawn.  |
| 34(h) | Commenter notes that the DWC’s amendment allowing for the electronic service of a cancellation includes defining the cancellation date as from the date of the “electronic proof of service”. Commenter opines that the use of this term “proof of service” adds a level of formal service that may not have been intended. Clarity on the requirement for documentation of proof of electronic transmission and/or delivery is needed. | Andrea GuzmanClaims Regulatory DirectorState Compensation Insurance Fund (SCIF)November 15, 2022Written Comment | This provision has been withdrawn and will go through a 15 day comment period to be updated to provide clarity.  | Withdrawn |
| QME Form 31.5 | Commenter recommends the following revised text:A QME on the panel cannot schedule an examination for the employee within ~~sixty~~**ninety** (~~60~~90) days of the initial request for an appointment, or if the **~~60~~90** day scheduling limit has been waived pursuant to section 3**~~3~~1**.3(e) of title 8 of the California Code of Regulations, the QME cannot schedule the examination within ~~ninety~~ **one- hundred and twenty** (~~90~~120) days of the date of the initial request for an appointment.Commenter opines that the DWC’s changes are intended to align with the proposed amendments made under§31.5 (a)(2). However, the changes to this form are not consistent with the numeric and formatting revisions made under §31.5(a)(2). In addition, it seems the reference to §33 (e) on this form is a typographical error that needs to be updated to the correct regulation section. Additional modifications to this form are needed for clarity on the numeric and formatting changes proposed, including citing the appropriate regulation section. | Andrea GuzmanClaims Regulatory DirectorState Compensation Insurance Fund (SCIF)November 15, 2022Written Comment | The Administrative Director agrees. | Please see update.  |
| QME Form 108 | Commenter notes the following typographical errors in the address heading:* Correct the misspelling of “INDUSRAIL”
* Add a space between the words “WORKERS” and “COMPENSATION”
 | Andrea GuzmanClaims Regulatory DirectorState Compensation Insurance Fund (SCIF)November 15, 2022Written Comment | The Administrative Director agrees. | Please see update.  |
| QME Form 108 | Commenter recommends the following revised text:2) Call the QME’s office, listed on the panel form, **within ten (10) days of the date the QME list was issued** by the Medical Unit and make an appointment for an examination.Tell the office staff for the QME that you are calling for a “QME exam”. If you will need an interpreter, tell the QME’s office. The staff will ask you for information that you will find at the top of the QME panel list. The examination can occur by agreement at an office location listed with the medical director or by a remote health evaluation in accordance with regulation section 46.3.Commenter notes that the DWC advised in its Initial Statement of Reasons that part of the changes made to subsection 2 of this form include adding language “*that an examination can occur by agreement at an office location listed with the medical director or by remote health in accordance with regulation section 46.3.”* However, it is not clear which parties need to agree for the first appointment to occur at a different office and/or by a remote health evaluation. Commenter requests clarity as to which parties need to agree for the initial examination to occur at a different office and/or by remote health evaluation. | Andrea GuzmanClaims Regulatory DirectorState Compensation Insurance Fund (SCIF)November 15, 2022Written Comment | The Administrative Director disagrees. Regulation section 34 provides for written agreement by the parties. | None.  |