



**California Workers' Compensation Institute**  
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VIA E-MAIL – [DWCrules@dir.ca.gov](mailto:DWCrules@dir.ca.gov)

Maureen Gray, Regulations Coordinator  
Division of Workers' Compensation, Legal Unit  
P.O. Box 420603  
San Francisco, CA 94142

**Re: Proposed Amendments to the QME Regulations**

Dear Ms. Gray:

These comments on proposed amendments to the Qualified Medical Evaluation (QME) regulations are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 80% of California's workers' compensation premium, and self-insured employers with \$87B of annual payroll (33.6% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Allianz Global Corporate and Specialty, AmTrust North America, AXA XL Insurance, Berkshire Hathaway, CHUBB, CNA, CompWest, CopperPoint Insurance Companies, Crum & Forster, EMPLOYERS, Everest Insurance, GUARD Insurance Companies, The Hanover Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, North American Casualty Company, Preferred Employers Insurance, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, Travelers, WCF National Insurance, Zenith Insurance, and Zürich North America.

Self-insured employer members include Albertsons/Safeway, BETA Healthcare Group, California Joint Powers Insurance Authority, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Los Angeles, City of Pasadena, Costco Wholesale, County of Los Angeles, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Disneyland Resort, East Bay Municipal Utility District, Grimmway Farms, Kaiser Permanente, North Bay Schools Insurance Authority, Pacific Gas & Electric Company, Schools Insurance Authority, San Diego Gas and Electric, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group, Southern California Edison, Southern California Gas, Special District Risk Management Authority, Sutter Health, United Airlines, and the University of California.

The California Workers' Compensation Institute offers the following comments:

The Institute recommends that the Division follow the lead of the WCAB in its recent revision to its Rules of Practice and Procedure by also adopting the use of the singular “they” as a gender-neutral pronoun where appropriate. This would be in keeping with Assembly Concurrent Resolution 260, which encourages state agencies “to use gender-neutral pronouns and avoid the use of gendered pronouns when drafting policies, regulations, and other guidance[.]” As the WCAB pointed out in its FSOR, many other organizations have adopted the singular they as a gender-neutral pronoun. Most of the major style guides accept the use of the singular they as a gender-neutral pronoun. The Associated Press, for example, approved of the singular they as a gender-neutral pronoun in 2017, noting that “[t]hey/them/their is acceptable in limited cases as a singular and/or gender-neutral pronoun, when alternative wording is overly awkward or clumsy.” The MLA style guide followed suit in 2018, noting that “constructions such as “his or her” are often cumbersome, and some writers may find singular, gender-specific constructions insufficient, given that many people do not identify with a particular gender. Using plural constructions, if possible, is often the best solution—and the most inclusive one[.]” More recently, Merriam-Webster expanded its definition of “they” to specifically include usage as a singular, non-gendered pronoun. The use of “they” as a singular, non-gendered pronoun is so widespread both in print and in speech that it often passes unnoticed. In order to avoid the cumbersome “he, she, or they” the Institute recommends that less grammatical damage will be caused by the use of “they” in these and other forthcoming regulations.

**Section §1(o):**

Rather than limiting the role of the DEU to “issuing summary ratings,” we recommend that the definition should read, “DEU is the Disability Evaluation Unit under the Administrative Director pursuant to §10150 of Title 8 of the California Code of Regulations.”

**Section §1(s):**

Reference to “Section 9793(f)” should be corrected to “Section 9793(g),” consistent with the Medical Legal Fee Schedule that took effect April 1, 2021.

**Section §1(ff):**

Reference to “Section 9793(l)” should be corrected to “Section 9793(m),” consistent with the Medical Legal Fee Schedule that took effect April 1, 2021.

**Sections §§11(a)(4) and (b)(1):**

Oversight of the initial appointment of a QME is essential to furthering the stated goal of the Division to improve the quality of evaluators and their written reports. The Institute recommends that these sections should also require first-time applicants to be granted a “provisional,” rather than permanent, appointment status for a period of two (2) years. During this time period, the provisionally appointed QME applicant shall be required to serve a redacted copy of each report on the Director of the Medical Unit (MU), concurrent with service on the parties, after having been selected as a QME from an assigned panel under §4062.1 or remaining on the panel after the striking process has been completed under §4062.2. The Medical Director and the investigative division of the MU would then be required to continuously review submission of reports for content and quality and provide feedback to the provisional QMEs

when the reports are determined to be insufficient. At the conclusion of the provisional appointment period, the QME may seek reappointment and permanent status pursuant to section 50. Conversely, if during the provisional period, the Medical Unit has determined that reports are insufficient as to content and quality and/or complaints have been received pursuant to section 60(c), the provisional QME applicant may be denied reappointment pursuant to section 51.

We believe that an initial “provisional” status is critical to ensuring quality of medical-legal reports and is within the regulatory authority of the Division since it is vested with the authority to implement “any additional medical or professional standards that a medical evaluator shall meet as a condition of appointment, reappointment, or maintenance in the status of a medical evaluator,” under §§139.2(b)(7) and (j)(6). Likewise, pursuant to §139.2(i), the Medical Director is required to “continuously review the quality of comprehensive medical evaluations and reports prepared by agreed and qualified medical evaluators and the timeliness with which evaluation reports are prepared and submitted.”

#### **Section §11(f)(9):**

The Institute recommends changes to this section as follows:

“An applicant who fails the exam one time shall show proof of having completed eight (8) hours continuing education from a course approved by the Administrative Director prior to taking the examination again.”

#### **Section §11.5(i):**

It has been the Division’s stated intention to reduce frictional disputes and improve the quality of report writing when proposing amendments to regulations applicable to the QME or Medical Legal Fee Schedule process. The quality of instruction and the duration of training required of new QME applicants necessarily impacts the quality of the evaluator’s report, which is critical to the efficient functioning of the California workers’ compensation system. Yet, the Division proposes only to increase the required completion of course training preceding appointment as a QME by 4 hours (*i.e.*, from 12 to 16 hours) under proposed §§11(b)(1) and 11.5(i).

Because improvement of quality report writing and consistency of instruction by accredited education providers covered in §11.5(a-h) is the desired outcome, it must be recognized that the detailed curriculum covered in §11.5(i)(1-10) cannot reasonably be included or adequately instructed within the proposed 16-hour requirement. As such, insufficient training may continue to be a contributing factor to the poor quality of medical legal reports. Moreover, we believe that initial educational requirements for a new QME applicant should be substantially greater than the continuing education requirements for established QMEs as set forth in §55.

We urge the Division to increase the minimum course requirement to thirty (30) hours. Other key industry participants are required to complete much more extensive curriculum training on similar topics in order to meet their basic qualification standards. For example, Workers’ Compensation Claims Adjuster certification requires 160 hours of initial training followed by 30 hours of continuing education every 2 years (§§2592.02 and .03). Medical-Only Adjuster certification requires 80 hours of initial training followed by 20 hours of continuing education every 2 years (§§2592.02 and .03). Likewise, Medical Bill Reviewer certification requires 40 hours of training followed by 16 hours of continuing education every 2 years (§2592.04). The

State Bar of California requires 45 initial and 36 hours of continuing education (MCLE) training every 3 years for attorneys who have satisfied the requirements for legal specialization in workers' compensation.

The number of hours required for claims adjusters and bill reviewers is indicative of the complexity of the California workers' compensation system. In order for a physician to become familiar with the requirements that will enable them to perform adequate evaluations and create reports that provide the basis for impairment ratings and disability compensation, more training must be required. We have the following proposal.

**Section §11.5(i)(1-9):**

To promote consistency and quality of instruction offered by different accredited education providers described in §11.5(a-h), the Institute recommends re-organization of this section with mandatory completion of instruction according to specific core topics to satisfy course requirements. As currently constructed, the proposed section would not ensure uniformity of instruction by accredited education providers for all QME applicants. Instead, we recommend that the minimum thirty (30) hours of instruction in disability evaluation report writing should be structured to adequately address the proposed curriculum of training as follows:

- Four (4) hours of instruction [2 hours mandatory] – The QME Process and the Role of the Evaluator
- Eight (8) hours of instruction [4 hours mandatory] – Medical Legal report writing and the Anatomy of a Medical Legal Report
- Two (2) hours of instruction – The Medical Treatment Utilization Schedule (MTUS), adopted by the Administrative Director pursuant to Labor Code §5307.27 and §9792.20 et seq. of Title 8 of the California Code of Regulations
- Two (2) hours of instruction [2 hours mandatory] – Anti-bias training which satisfies the content requirements set forth in §11(h)
- Eight (8) hours of instruction [8 hours mandatory] – Evaluation of disability in California pursuant to §§4660 and 4660.1 allocated as follows:
  - Two (2) hours of instruction for dates of injury not subject to AMA Guides impairment rating
  - Six (6) hours of instruction for dates of injury on/after 01/01/05 and exceptions that apply for dates of injury prior to January 1, 2005 - *AMA Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> edition*
- Six (6) hours of instruction [3 hours mandatory] – Review of workers' compensation case law and apportionment of disability pursuant to §§4663 and 4664

**Section §11.5(i)(10):**

The Institute recommends that §11.5(i)(10) should not be included in or credited toward the hourly curriculum requirements set forth in §11.5(i), but rather submission of a medical-legal

report and critique by an accredited education provider should be added to §11 as a condition of eligibility for initial appointment as a QME.

### **Section §11.5(i)(5):**

This section recommends training covered in “§§9725 through 9727 of title 8 of the California Code of Regulations.” We suggest that there should be conformity with concurrent DEU proposed regulations (1<sup>st</sup> Forum comment period closed 04/07/21) that intend to repeal and replace these same sections with new proposed §§10145 through 10147.

### **Section §14:**

All chiropractors are subject to the workers’ compensation evaluation certification under §§11(a)(4) and 14(a) as a condition for QME appointment. While the type of chiropractic training and instructors who provide it may be exempt under §11(b)(1), we are not clear as to which section of §11.5 the Division is referring, since the section also includes requirements for accreditation of education providers. As such, the Institute would recommend that this section specifically refers to §11.5(i).

The Institute is concerned that the Division has chosen to reduce required course hours from 44 to 25 hours and anticipates that this may result in loss of competency of chiropractic evaluators who are also assigned to QME Panels. For this reason, we recommend that there be no reduction or adjustment to the current 44-hour education requirement.

We also recommend revisions to proposed §14(b)(4) such that in addition to the 8 hours of overview training in workers’ compensation [§14(b)(3)] and 2 hours of mandatory anti-bias instruction (§14(b)(4)(E)], the remaining course hours at a minimum shall include the following mandatory training:

- Four (4) hours of instruction – Review of workers’ compensation case law; and
- Eight (8) hours of instruction – Evaluation of disability in California pursuant to §§4660 and 4660.1 allocated as follows:
  - Two (2) hours of instruction for dates of injury not subject to AMA Guides impairment rating
  - Six (6) hours of instruction for dates of injury on/after 01/01/05 and exceptions that apply for dates of injury prior to January 1, 2005 - *AMA Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> edition*

The Institute also recommends that submission by the chiropractic applicant of a medical-legal report and critique by an accredited education provider should be required as an additional condition of eligibility for initial appointment as a QME pursuant to §11(a)(4) and should not be included in or credited toward the required 44 education hours to satisfy course completion.

### **Sections §33(a) and §51(a)(3):**

Proposed §51(a)(3) provides a discretionary opportunity for the Medical Director to deny reappointment to physicians who list themselves as unavailable in excess of 90 days during the calendar year. The Institute understands the tension between the Division’s need to ensure that

the QME physicians are actually making themselves available as part of the system, and the need of those physicians to ensure that they are not over-promising their availability to the point that they end up doing a disservice to the system in the long run. In hopes of reconciling the competing interests, the Institute suggests that language be added to §33(a) to include fully booked schedules as a “good cause” justification for the unavailability. Clearly stating that lack of availability due to medical-legal evaluations already on calendar will permit conscientious (and fully participating) physicians from becoming overextended without facing the risk of a denial of reappointment.

**Section §51:**

The QME Investigations and Enforcement Section reviews complaints regarding QME physicians to determine qualifying and disqualifying factors relevant to QME certification. At the time of reappointment, all such complaints received by the Medical Director should be included in the review to determine if the reappointment of the QME is supported or should be denied.

Therefore, the Institute recommends adding new subsection §51(a)(15) that states, “upon referral of a credible complaint or complaints filed by the public on QME Complaint Form (rev. 12/08) or referred by the Medical Director pursuant to §60(c) of Title 8 of the California Code of Regulations.”

Thank you for the opportunity to comment, and please contact us if additional information would be helpful.

Sincerely,

*Jackie Secia*

Jackie Secia  
CWCI Claims and Medical Director

JS/pm

cc: George Parisotto, DWC Administrative Director  
Katrina Hagen, DIR Executive Director  
CWCI Claims Committee  
CWCI Medical Care Committee  
CWCI Legal Committee  
CWCI Regular Members  
CWCI Associate Members