

**State of California
Office of Administrative Law**

In re:
Division of Workers' Compensation

Regulatory Action:

Title 08, California Code of Regulations

Adopt sections: 36.7, 46.2

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2021-0920-02

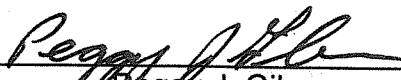
OAL Matter Type: Emergency Readopt (EE)

The Division of Workers' Compensation (DWC) in this re-adopt (2020-0504-01E, 2021-0219-02EE) is maintaining the process to provide the ability of Qualified Medical Evaluators to provide certain medical-legal evaluations and to cancel, postpone, or arrange medical-legal evaluations at any available location. Additionally, DWC is providing for the ability of participants in the workers' compensation system to continue to receive medical-legal reports via electronic service.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 10/12/2021 and will expire on 1/11/2022. The Certificate of Compliance for this action is due no later than 1/10/2022.

Date: September 30, 2021


Peggy J. Gibson
Senior Attorney

For: Kenneth J. Pogue
Director

Original: George Parisotto,
Administrative Director
Copy: Nicole Richardson

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

EMERGENCY

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2021-0920-02	EMERGENCY NUMBER EE
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Division Of Workers' Compensation within Department of Industrial Relations			AGENCY FILE NUMBER (If any)

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

SEP 30 2021

11:15 PM

OFFICE OF ADMIN. LAW
2021 SEP 20 AM 11:48

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) QME Regulations in Response to COVID-19		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2020-0504-01, 2021-0219-02	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 36.7, 46.2	
TITLE(S) 8 CCR		AMEND REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	
		<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	
		<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44, and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))		<input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) January 10, 2022 10/12/2021	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)		<input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Nicole L. Richardson		TELEPHONE NUMBER 510-286-0656	FAX NUMBER (Optional) 510-286-0687
		E-MAIL ADDRESS (Optional) nrichardson@dir.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

George Parisotto, Administrative Director, Division of Worker's Compensation

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 30 2021

Office of Administrative Law

Adopt

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

§ 36.7 QME Electronic Service 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 report and required documents may be served electronically as follows:
 - (1) For purposes of this section:
 - (A) “Electronic service” means service of the medical-legal report and all documents required by section 36, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by the physician or by an agent of the physician, or through an electronic service provider.
 - (B) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.
 - (C) “Electronic notification” means the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.
 - (2) Electronic service shall be permitted only where the parties agree and a written confirmation of that agreement is made. At the time of giving consent to electronic service, a party or entity shall provide the party’s electronic address for the purpose of receiving electronic service.
 - (3) Electronic service shall not be permitted on any unrepresented party or unrepresented injured worker.
 - (4) For purposes of electronic service, the medical-legal report or other papers must be transmitted 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.
 - (5) Service is complete at the time of transmission. Any period of notice and any right or duty to act or make any response within any period or on a date certain after service of the document, shall be extended by two business days.

- (b) For purposes of service of a medical-legal report in claims of injury to the psyche, all of the terms of section 36.5 shall apply to electronic service, except the service requirements in section 36.5(b)(6) may be accomplished by electronic service pursuant to the terms of this regulation.
- (c) For purposes of service of all medical-legal reports, all of the terms of section 36 shall apply to electronic service, except that the manner of service of the report may be accomplished by electronic transmission, where appropriate, pursuant to the terms of this regulation.
- (d) For purposes of electronic service of all medical-legal reports, the mandatory form 122 (AME or QME Declaration of Service of Medical-Legal Report, see 8 Cal. Code Regs. § 122) may be replaced by an Affidavit of Proof of Electronic Service. The Affidavit of Proof of Electronic Service shall set forth the exact title of the document served in the action, showing (A) the name and residence or business address of the person making the service, (B) that he or she is a resident of, or employed in, the county where the electronic service occurs, (C) that he or she is over the age of 18 years, (D) that he or she is readily familiar with the business' practice for serving electronically, and (E) that the document would be electronically served that same day in the ordinary course of business following ordinary business practices. The Affidavit of Proof of Electronic Service shall be signed under penalty of perjury under the laws of the State of California. The Affidavit of Proof of Electronic Service shall also include all of the following:
 - (1) The electronic service address and the residence or business address of the person making the electronic service.
 - (2) The date of electronic service.
 - (3) The name and electronic service address of the person or entity served.
 - (4) A statement that the document was served electronically.
- (e) For purposes of electronic service, the physician shall maintain an original copy of all documents electronically served, pursuant to the terms of section 39.5 of title 8, California Code of Regulations. The documents maintained by the physician pursuant to this section shall contain an original signature.

Note: Authority cited: Sections 133, 139.2, 4627 and 5307.3

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

§ 46.2 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 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.
 - (A) 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 (QME: Appointment Notification Form See 8 Cal. Code Regs. §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.
 - (3) 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:

- (A) The injured worker is not required to travel outside of their immediate household to accomplish the telehealth evaluation; and
 - (B) 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
 - (C) 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;
 - (D) The telehealth visit under the circumstances is consistent with appropriate and ethical medical practice, as determined by the QME; and
 - (E) The QME attests in writing that the evaluation does not require a physical exam.
- (4) 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.
- (b) 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.

- (c) 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.
- (d) 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.

- (e) Upon the lifting or termination of Governor Gavin Newsom's Executive Order N-33-20, and when there is no longer any stay-at-home order in the jurisdiction where the injured workers resides or evaluation will occur, QME evaluations may take place under the provisions of the non-emergency QME regulations (title 8 Cal. Code of Regs. Articles 3, 4 and 4.5) or via the emergency regulations while they are in effect.
- (f) 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.

Note: Authority cited: Sections 133, 139.2, 4627, 5307.3, 5307.6, 4061 and 4062.