

**State of California
Office of Administrative Law**

In re:
Division of Workers' Compensation

Regulatory Action:

Title 08, California Code of Regulations

Adopt sections: 46.3

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2022-0105-02

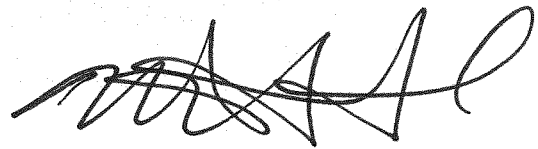
OAL Matter Type: Emergency (E)

In this emergency action, the Division of Worker's Compensation (DWC) adopts an emergency regulation regarding medical-legal evaluations in response to continued COVID-19 pandemic. Due to the Omicron variant of Covid-19, the DWC adopts this emergency regulation, which is similar to section 46.2. This emergency regulation allows Qualified Medical Evaluators (QME), Agreed Medical Evaluators (AME), or other medical-legal evaluations to be performed via telehealth.

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 1/18/2022 and will expire on 7/19/2022. The Certificate of Compliance for this action is due no later than 7/18/2022.

Date: January 18, 2022



**Thanh Huynh
Senior Attorney**

**For: Kenneth J. Pogue
Director**

**Original: George Parisotto,
Administrative Director
Copy: Nicole Richardson**

NOTICE PUBLICATION/REGULATORY ACTION SUBMISSION

EMERGENCYInstructions on
reverse

For use by Secretary of State only

STD. 400 (REV. 01-09)

| | | | |
|---------------------|--------------------------------------|--|------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z- None | REGULATORY ACTION NUMBER 2022-0105-02E | EMERGENCY NUMBER |
|---------------------|--------------------------------------|--|------------------|

For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
In the office of the Secretary of State
of the State of California**JAN 18 2022****1:35 PM**OFFICE OF ADMIN. LAW
2022 JAN 5 AM 11:50

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

Division of Workers Compensation, within Dept. of Industrial Relations

AGENCY FILE NUMBER (if any)

None

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

| | | | | |
|--|--|---------------|----------------------------------|-------------------------------|
| 1. SUBJECT OF NOTICE | | TITLE(S) 8 | FIRST SECTION AFFECTED 46.3 | 2. REQUESTED PUBLICATION DATE |
| 3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | 4. AGENCY CONTACT PERSON Nicole Richardson | | TELEPHONE NUMBER 510-286-0656 | 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 Regulation in Response to COVID-19 | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) |
|--|--|

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 46.3 |
| | AMEND |
| | REPEAL |
| TITLE(S) 8 | |

3. TYPE OF FILING

| | | | |
|---|---|---|---|
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <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"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | <input type="checkbox"/> Other (Specify) _____ | | |

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 30th day after filing with Secretary of State | <input checked="" type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> \$100 Changes Without Regulatory Effect | <input type="checkbox"/> Effective other (Specify) _____ |
|--|---|--|--|

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

| | | |
|---|--|---|
| <input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6600) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify) _____ | | |

7. CONTACT PERSON

Nicole 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 P. Parisotto, Administrative Director

12/31/2021

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED**JAN 18 2022**

Office of Administrative Law

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

§ 46.3 Emergency Regulation Regarding Medical-Legal Evaluations in Response to continued COVID-19 Pandemic

- (a) During the period that this emergency regulation is in effect, a QME, AME, or other medical-legal evaluation may be performed in the circumstance where the physician and the injured worker are not in the same physical space or site during the evaluation. The evaluation shall be performed by way of telehealth through the use of electronic means of creating a virtual meeting between the physician and the injured worker.
- (1) A QME or AME may complete a medical-legal evaluation through telehealth when a hands on physical examination is not necessary and all of the following conditions are met:
 - (A) 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
 - (B) 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 Worker's Compensation Appeals Board, along with a Declaration of Readiness to Proceed to set the matter for a hearing;
 - (C) The telehealth evaluation conducted by means of a virtual meeting is consistent with appropriate and ethical medical practices, as determined by the QME and the relevant medical licensing board; and
 - (D) The QME attests in writing that the evaluation does not require an in person physical exam.

- (2) For purposes of evaluations pursuant to subdivision (a) of this emergency regulation, telehealth means remote visits via video-conferencing, video-calling, or such similar technology that allows each party to see and converse with the other via a video and audio connection. The evaluation must be conducted with the same standard of care as an in person visit and must comply with all relevant state and federal privacy laws.
- (b) 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:
 - (1) 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.
 - (2) For purposes of QME telehealth evaluations conducted under this regulation, the medical office listed on the panel selection form for the QME shall be deemed the site of the telehealth evaluation. For all other telehealth evaluations conducted under this regulation, the medical office of the physician that is within a reasonable geographic distance from the injured worker's residence shall be deemed the site of the telehealth evaluation.

Note: Authority Cited: Section 133, Labor Code. Reference Citations: Sections 4060 and 4603.5, Labor Code.