

Division of Workers' Compensation

QME REGULATIONS UPDATE

Effective February 17, 2009

The text of the new QME regulations and the new forms are posted on-line at:

http://www.dir.ca.gov/dwc/dwcpropregs/qme_regulations/qme_regulations.htm

Other DWC forms are available at: <http://www.dir.ca.gov/dwc/forms.html>

The fill-in-able forms on the DWC site cannot be saved on-line.

Highlights of the changes to the QME Regulations include:

- **Agreed Panel QME**

When an injured worker is represented and the DWC provides the attorneys with a panel QME list and the attorneys agree to one of the QMEs on the list without making any strikes, the QME then becomes the "Agreed Panel QME." An Agreed Panel QME shall be entitled to be paid at the same rate as an AME for medical/legal evaluation reports and medical testimony. If the attorneys each strike a name from the panel QME list and the remaining QME is selected, you remain the QME selected and this definition does not apply. (8 CCR Section 1 (d))

- **Definition of Physician's Office**

The DWC made several attempts to define and limit the number of physician offices that a QME may list. In the final regulations, a physician's office was defined as, "a bona fide office facility which is identified by a street address and any more specific designation such as a suite or room number which contains the usual and customary equipment for the evaluation and treatment appropriate to the physician's medical specialty or service." No limitation on the number of office locations was included. (8 CCR Section 1 (y))

The appointment may be moved to another location listed with the DWC if requested by the injured worker and for the sole convenience of the injured worker. (8 CCR Section 34)

- **Panel Request Forms 105 and 106** have been revised.

Specialty codes used on the panel request form have changed and eliminated subspecialty designations not recognized by the providers' licensure Board. COA supported this change as this will provide injured workers with a more accurate list of the providers' area of expertise.

- **Panel QMEs can be replaced for the following reasons:**

- 1) panel QME cannot doesn't practice in specialty requested
 - 2) panel QME cannot schedule an exam within 60 days of initial appointment request or within 90 days of the initial request if the 60 day time limit is waived
 - 3) injured worker has moved their residence
 - 4) QMEs are members of the same group practice
 - 5) QME is unavailable
 - 6) QME selected is or has been the injured worker's PTP or secondary physician for the injury
 - 7) QME issued a late report – more than 30 days following the evaluation and the requesting party objected to the report based on its lateness. Their objection must be prior to the date that the report was served
 - 8) QME has a conflict of interest
 - 9) QME refuses to provide a complete report
- (8 CCR Section 31.5)

- **Obtaining an Additional QME Panel in a Different Specialty**

Upon showing of good cause that a panel of QME physicians in a different specialty is needed to resolve disputed issues, an additional panel of QME physicians may be selected in the specialty requested. Good cause includes a recommendation by the AME/QME that there are issues beyond their scope of practice and areas of clinical

competence or by agreement of the parties or by order of the Worker's Compensation Judge. Parties must agree on the need for an additional evaluation and on the specialty or the need for an additional evaluation must be based on another reason such as the AME/QME recommendation for the need for an additional QME panel. (8 CCR Section 31.7)

- **Consultations**

Whenever an AME or panel QME determines that a consultation is necessary, they must arrange the consultation appointment and advise the injured employee and claims administrator. The proposal that the consultant be selected from a DWC panel which was opposed by COA, was not adopted. No ex parte communication is allowed with the consultant. The consultant does not need to be a QME. The referring AME/QME must manage the scheduling of the evaluation by the consultant including notifying all parties using DWC Form 110. (8 CCR Section 32)

The QME is responsible for incorporating the consulting report into their report and commenting on whether and how the findings in the consulting report changes the referring evaluator's opinion. If the QME does not receive the consulting report in a timely manner, the QME evaluation report must still be timely served. The QME must issue a supplemental report within 15 days of receipt of the consult report. (8 CCR Section 32(f).)

Other requested supplemental reports must be submitted within 60 days from the date of the written request. (8 CCR Section 38.8)

- **QME Evaluations**

QME Evaluations must be scheduled within 60 days unless the 60 day right is waived by the party with the legal right to schedule the evaluation. If the 60 day right is waived, the evaluation must be scheduled within 90 days. (8 CCR Section 33(e) and 31.5 (a) (2))

A QME must complete DWC Form 110 – QME Appointment Notification Form and send it to the employee, the claims administrator or if none – the employer within 5 business days of rescheduling the appointment. If the injured worker is represented, the form must also be sent to the injured worker's attorney.

- **Cancelling an Evaluation**

QME/AME cannot cancel an evaluation with less than 6 business days notice except with good cause – must give written reason. The cancelled appointment must be rescheduled within 30 calendar days of the date of the cancellation. The parties may also not cancel an evaluation with less than 6 business days notice except with good cause. They must also give written reasons for the cancellation. The QME/AME may bill for a missed appointment, but is not guaranteed payment. (8 CCR Section 34)

- **Content of Report**

If two physicians are involved in the writing of the report, the report must clearly state the portion of the report written by each physician. The report must summarize all medical and non-medical records reviewed. "If the evaluator signs the report on any date other than the date of the examination, the evaluator shall enter the date the report is signed next to or near the signature on the report." (8 CCR Section 35.5 and 41(c)(7))

- **Depositions**

Unless the Workers' Compensation Judge orders otherwise, an evaluator must make themselves available for deposition within 120 days of the notice of deposition. The deposition generally takes place at the evaluation site or within 20 miles of the evaluation site if requested by the injured worker. (8 CCR Section 35.5).

- **Serving the Report** (8 CCR Section 36)

Represented case – report must be served on the injured worker, their attorney, and claims administrator along with QME form 122.

Unrepresented case – report must be served on injured worker and the claims administrator along with QME form 111.

For Medical-Legal reports that addresses permanent impairment, permanent disability or

apportionment in an unrepresented case – in addition to the QME form 111 service requirements above, the report must also be sent to the DEU office along with DEU forms 100 and 101, with the document cover – EAMS DWC form 10232.1 and separator sheet DWC form 10232.2.

A DWC instructional sheet to assist QMEs/AMEs with complying with the EAMS reporting requirements is posted on the DWC website.

- **Timeline for Submitting Report**

While not a new requirement, the QME regulations continue to require that the evaluation reports be submitted within 30 days of the evaluation, unless an extension has been granted. The new language clarifies that if an AME/QME does not comply, the employee/employer may request a QME replacement. The employer has no obligation to pay for the late report. (8 CCR Section 38)

Both parties may agree in writing to waive the lateness of the report by signing and submitting QME Form 113 or 116.

- **Record Retention**

QMEs have an obligation to retain a copy of all comprehensive medical-legal reports completed by the QME for a period of five years. This was the existing policy. The regulations clarify that this requirement may be met by having a signed electronic copy on file. (8 CCR Section 39.5)

- **Proof of Service Form** - New form – DWC Form 122. For unrepresented cases, a separate proof of service form is not required as the proof of service is built into the Form 111.

- **Ethical Requirements**

It is a conflict of interest for an AME/QME to evaluate an injured worker and also treat or solicit to provide treatment, medical supplies, or medical devices to the injured worker. (8 CCR Section 41)

- **QME/AME Conflict of Interest Disclosure**

New conflict of interest disclosure rules have been adopted as part of the regulations including a revised Conflict of Interest Disclosure Form. DWC Form 123 (8 CCR Section 41.5)

- **Gifts to Medical Evaluators**

No AME/QME may accept gifts that have a total fair market value of \$360 or more in the course of any consecutive twelve months. (8 CCR Section 41.7)

Questions regarding this summary should be directed to COA at 916-454-9884.