



[Back to News](#) | [Print News](#)

State: Calif.

DWC Unveils Emergency Telehealth Rules to Mixed Reviews: Top [2020-04-29]

The California Division of Workers' Compensation released proposed emergency regulations regarding telehealth medical-legal evaluations during the COVID-19 pandemic, a move that stakeholders have been pleading for since the virus began taking a toll in early March.

The reviews are in: The rule changes proposed Friday are better than the current state of affairs, but may need more tweaking.

"I think they were a nice attempt, but there are still some problems with them," said Suzanne Honor-Vangerov, former DWC Medical Unit Manager and owner of Honor System Consulting.

QME advocates have been pressuring the DWC for nearly two months to adopt rules on remote telehealth evaluations during Gov. Gavin Newsom's stay-at-home order. A Southern California law firm representing more than 100 QMEs threatened legal action against the DWC before officials agreed to talk to plaintiffs in hopes of reaching a compromise that could lead to proposed guidelines or rule changes.

The proposed changes announced Friday are intended to "address the ongoing need for medical-legal evaluations and to prevent a backlog of medical-legal evaluations resulting from stay-at-home orders throughout the state," the DWC said in a statement.

One proposed change, Section 36.7, would authorize electronic service of med-legal reports. Electronic service would be allowed only when parties agree and a written confirmation of that agreement is documented. It can be performed directly by the physician, a physician's agent or via an electronic service provider, according to the proposal.

This could be good news for QMEs, many of whom have been looking for ways to conduct business either remotely or electronically to prevent spreading or contracting COVID-19.

But much of the reaction to the would-be changes has been directed at Section 78, according to several experts who reviewed the DWC's proposal.

Section 78(a)(1) would allow QMEs to reschedule appointments already on the calendar. The rescheduled appointments would have to take place within 90 days after local or state stay-at-home orders are rescinded.

Another provision, 78(a)(2) focuses on record review and electronic interview summary reports. This addition would allow doctors to interview workers either by phone or video conference, and the parties would be able to schedule an in-person follow-up once the stay-at-home order ends.



The section would require that a notice of electronic interview be served to all parties, and it would authorize a fee of \$500 for record review and an interview summary report. The fee would include 200 pages of record review. Review of 201 to 1,700 pages would be reimbursed at an additional \$3 per page. Anything above 1,700 pages would be \$2 per page, according to the proposal.

An in-person, face-to-face evaluation following the interview would be paid \$1,316.25, and new records provided would net an additional \$2 per page.

Section 78(a)(3) would allow telehealth med-legal evaluations when certain conditions are met, including:

- The injured worker is not required to leave his or her home to participate in the exam.
- There is a medical issue in dispute that involves whether or not the injury arose out of and in the course of employment, or the physician is asked to address termination of indemnity benefits or address a dispute over work restrictions.
- The injured worker, carrier or employer and the QME agree in writing to the telehealth evaluation. The rules would prohibit a party from "unreasonably" refusing to agree to a telehealth exam.
- The visit is consistent with appropriate and ethical medical practice, as determined by the QME.
- The QME attests that the evaluation doesn't require a physical exam.

The division's proposal would pay \$2,015 for telehealth med-legal evaluation, including 400 pages of record review. The rules would provide additional reimbursement of \$3 per page for pages 401 to 1,700, and \$2 per page beyond that.

A subsequent in-person evaluation that occurs within nine months of a telehealth evaluation would be paid \$503.75. This would include 200 pages of record review, with additional payments of \$3 per page for 201 to 1,700 pages, and \$2 per page beyond that.

The proposed guidelines offer some clarity, but questions about procedure and application still remain, stakeholders said.

Specifically, Honor-Vangerov pointed to sections 78(a)(2) and 78(a)(3) of the DWC's proposed emergency regulations. Both sections cover remote QME evaluations, but their fee schedules result in different reimbursements despite doctors apparently having to jump through similar hoops to conduct their evaluations, she said.

Honor-Vangerov said the regulations are attempting to mix and match the current Medical Legal Fee Schedule with a payment schedule that's still being developed when no one knows what the new fee schedule is going to be.

"The math doesn't add up to me," Honor-Vangerov said. "Why is there a difference in the number of pages of records included in the two different scenarios? It creates a significant additional reimbursement under section 2."

If an exam requires reviewing 400 pages of records, a telehealth exam would be worth \$2,015. The electronic interview option would be worth \$1,250, including the \$650 base rate that includes 200 pages of records, plus another \$600 for reviewing another 200 pages at \$3 per page. The face-to-face evaluation following the interview would be worth another \$1,316.25, bringing the total for this option to \$2,566.25.

Honor-Vangerov also said it would be difficult to get all parties to agree in writing before the evaluation.

"I don't like anything that requires something agreed to in writing ahead of time," Honor-Vangerov said. "You're never going to get it. They've never going to agree."

And she said the proposed rule changes aren't clear as to when physical exam is required in Section 78(a)(3).

"Under section 3, when do you determine if it doesn't require a physical exam? It's unclear," she said. "Do they do it after they've seen the patient? During the time they see the patient?"

She also said that the regulations and fee schedules need to incorporate differences between specialties, such as psychiatrists.

"It's a good try. I just think they made it too complicated," Honor-Vangerov said. "I think there's an easier way they can accomplish this."

The proposed regulations will be sent to the state Office of Administrative Law by May 4, according to a DNC news release.

Gabor Vari, founder of California Medical Evaluators, called the proposed rule changes "a mixed bag."

"I think there's some good things in the proposal," Vari said. "This would allow for QMEs to perform all their evaluations via telehealth, which is overdue at this point. There's also flexibility in allowing leniency in scheduling evaluations and sending reports out in a longer time frame."

The "controversial" parts of the proposed changes also warrant mentioning, Vari said. Specifically, the rule changes would significantly alter the medical-legal fee schedule in a way that was not previously discussed among officials and stakeholders, he said.

"We spent a long time in stakeholder meetings where physician groups were meeting with insurance carriers and organizations that represent employers and companies and the outcome of those meetings, hosted by DWC, is that we had some semblance about what a new fee schedule would look like," Vari said. "It does not reflect the consensus that was reached at the stakeholder meetings."

The new changes would also put the burden on QMEs to request and receive written agreements from all parties before a telehealth evaluation, Vari said.

Steve Cattolica, a lobbyist at SC Advocates, said he wished officials had taken mental health evaluations into consideration when adopting the proposed rule changes.

Cattolica said stakeholders and DWC officials at one time agreed that any proposed new fee schedule would include a modifier for mental health evaluators. He also opined on the confusion between Sections 78(a)(2) and 78(a)(3) and said officials needed to add some clarity to their proposal.

"I think they not only have time, I think they're going to defeat themselves if they don't do it," he said. "The deck is sort of stacked against using this fee schedule. By its nature, you can't do a physical exam. Anything that requires a physical exam doesn't qualify."

Listening to stakeholders and making adjustments now could expedite the much-needed rules' passage and prevent OAL officials from delaying implementation, Cattolica said.

"There's nothing that's a slam dunk about this," he said.

The proposed rules are [here](#).