**ADDENDUM TO FINDING OF EMERGENCY**

**OF THE**

**DEPARTMENT OF INDUSTRIAL RELATIONS**

**DIVISION OF WORKERS’ COMPENSATION**

**REGARDING THE CALIFORNIA LABOR CODE**

**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

**DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS**

**CHAPTER 1. DIVISION OF WORKERS’ COMPENSATION**

**FORMERLY Article 7. PRACTICE PARAMETERS**

**Section 78 QME Emergency Regulations in Response to COVID-19**

**CURRENTLY ARTICLE 4. EVALUATION PROCEDURES**

**Section 46.2 QME Emergency Regulations in Response to COVID-19**

**Changes in the proposed regulations**

As a result of comments received about the proposed regulations, prior to and after submission to the Office of Administrative Law, the following changes have been made to the proposed emergency regulations:

1. As noted above, the numbering of the regulation has been changed from 78 to 46.2. This change was occasioned by a comment indicating that Article 7 had been repealed. The regulation now appears in Article 4 dealing with evaluation procedures, and has been renumbered accordingly.
2. On April 24, 2020, the Division of Workers’ Compensation (DWC) posted proposed emergency regulations titled “QME Regulations in Response to COVID-19”, California Code of Regulations, title 8, sections 36.7 and 78 on our website, addressing issues arising out of the COVID-19 pandemic. After the posting, the DWC received substantial feedback from stakeholders related to the fee provisions of proposed regulation 78. In order to solve the confusion related to the fee provisions, the DWC deleted text in section 78 that set forth how a physician may bill for the medical-legal services provided under the emergency regulation. This deletion does not change that the evaluations can occur; the only effect of the deletions is that the billing rates will now default to the DWC’s existing fee schedule.
3. Section (a)(2)(A) has been amended to add a specific reference to clarify the location of a form mentioned in that provision of the emergency regulation.
4. Section (a)(3)(E) has been amended to clarify that a physician’s attestation that a physical exam is not necessary must be in writing.
5. Section (e) has been amended to add clarity to the issue of when regular QME face-to-face evaluations may resume.
6. Statutory authority for enactment of the emergency regulation has been added to the end of the emergency regulation.

**Benefits of the proposed regulation**

The regulation is being enacted in order to allow Qualified Medical Evaluations to take place in a safe manner that is compliant with existing orders from the Governor’s office and local public health departments. Qualified Medical Evaluators (QMEs) serve an important function in the workers’ compensation system by providing a medical expert opinion in the form of evaluations and reports when there are medical issues in dispute between the parties in a workers’ compensation action. These evaluations are usually carried out in person, including an examination of the injured worker. These in-person evaluations would violate the current stay-at-home orders in place as a result of pronouncements of the Governor and local public health departments. The implementation of a system that allows the evaluations to take place by way of telehealth obviates the need for an

in- person evaluation and allows evaluations to go forward while stay-at-home orders are in effect.

**Compatibility with existing Regulations**

* The emergency regulation extends the time period that an appointment currently calendared with the QME may be rescheduled. Currently an appointment must be rescheduled no later than 60 calendar days from the date of the original appointment request pursuant to title 8, California Code of Regulations (CCR) section 34(e). The regulation extends this time to 90 days after the initiation of the stay-at-home orders, whether by way of state or local pronouncement.
* Regulations under Article 4.5, specifically 8 CCR sections 49, 49.2, 49.4, 49.8, & 49.9 set forth specific parameters for the amount of face-to-face time that must be spent in various types of evaluations. This emergency regulation would allow the face-to-face time to be done via telehealth in situations where the examination component of the evaluation can be performed via videoconferencing.
* The proposed regulation extends the time period for scheduling an initial QME appointment from 60 days to 90 days, and allows the party with the right to make the appointment to waive the 90-day requirement and schedule within 120 days. The effect of this is to temporarily suspend the provisions of 8 CCR section 31.3(e).
* Title Eight, California Code of Regulations section 38 provides time frames for preparation and service of the medical-legal evaluation reports. The emergency regulation extends all of the time frames enumerated in that regulation by 15 days.
* Title Eight, California Code of Regulations section 34(b) mandates that the first evaluation with a QME must take place at the office listed on the QME selection form generated by the DWC. The emergency regulation suspends this requirement and allows the first evaluation to take place at any office where the qualified medical evaluator has been certified by the DWC to perform evaluations.