**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**

**Article 3, assignment of qualified medical evaluator’s, evaluation procedure**

**Section 36.7 QME Electronic Service Emergency Regulation in Response to COVID-19.**

Government Code Section 11346.1 requires a finding of emergency to include a written statement with the information required by paragraphs (2), (3), (4), (5) and (6) of subsection (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action.

The Administrative Director of the Division of Workers’ Compensation (DWC) finds that the adoption of this regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

**FINDING OF EMERGENCY**

**Basis for the Finding of Emergency**

* Action is necessary to extend the regulation so that Division of Workers Compensation can complete the rulemaking process for this regulation.
* Action is necessary because COVID-19 continues to be present in California and business are operating with safety measures to help prevent the spread of the virus. These safety measures include remote working which this emergency regulation helps support by use of electronic service.
* Action is necessary because several work place functions have been adopted to provide for delivery and receipt of medical-legal reports and supporting documents electronically and maintaining those systems is a benefit to the workers’ compensation system.
* Action is necessary in order to continue to implement, on an emergency basis, the ability of Qualified Medical Evaluators to provide delivery of medical-legal reports by way of electronic service to alleviate the necessity of having all clerical staff come into the office to physically typographically complete and mail the medical legal reports.

**Background**

* The DWC develops regulations to implement, interpret, and make specific the California Labor Code.
* Qualified Medical Evaluators (QMEs) provide medical-legal evaluations of injured workers to resolve medical issues in dispute between parties to a claim or litigation regarding workers’ compensation. Evaluations lead to the production of a medical-legal report that is then served upon the parties to the action. This service is accomplished by physically delivering the report through the US mail. The clerical completion of these reports and physical deposit in the mail could require undue exposure to COVID-19. The use of electronic service of the medical-legal reports has been proposed as an effective means of providing continued service of the reports and limiting exposure.
* The Division of Workers Compensation intends to make this regulation permanent and needs additional time to complete that process.

**AUTHORITY AND REFERENCE**

The Administrative Director of the Division of Workers’ Compensation, pursuant to the authority vested in him by Labor Code sections 59, 111, 133, and 139.2, proposes to amend Subchapter 1 (Article 3) of Chapter 4.5, of Title 8 California Code of Regulations, and adopt section 36.7.

**INFORMATIVE DIGEST**

Summary of Existing Laws

**Labor Code section 139.2** is the enabling statute enacted to establish the Qualified Medical Evaluator Program in the California workers’ compensation system. Subsection (j)(1)(A) empowers the Administrative Director to develop procedures to be followed by all physicians in preparing and submitting the reports that are generated as a result of the evaluations performed to aid in the resolution of medical disputes, including the existence and extent of permanent impairment and limitations resulting from an injury.

**TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS RELIED UPON**

* [California’s Current Safety Measures and What to do now](https://covid19.ca.gov/safely-reopening/#what-to-do-now). August 11, 2021. https://covid19.ca.gov/safely-reopening/#what-to-do-now
* [DWC Newsline dated March 10, 2021 DWC Emergency Regulations for Medical-Legal Evaluations and Reporting in Response to COVID-19 in Effect through October 12, 2021](https://www.dir.ca.gov/DIRNews/2021/2021-29.html). https://www.dir.ca.gov/DIRNews/2021/2021-29.html
* [DWC Newsline dated April 29, 2021 DWC Posts Proposed Amendments to the Qualified Medical Evaluator Regulations to Online Forum for Public Comment](https://www.dir.ca.gov/DIRNews/2021/2021-52.html)

https://www.dir.ca.gov/DIRNews/2021/2021-52.html

* [Governor Gavin Newsom - EXECUTIVE ORDER N-33-20, March 19, 2020](https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf) https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf
* [Centers for Disease Control, web link, “How to Protect Yourself”](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html) https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html

**SUMMARY OF PROPOSED REGULATIONS**

The Administrative Director adopts an administrative regulation governing the electronic service of medical-legal reports occasioned by the COVID-19 virus prevention of continued exposure. This regulation implements, interprets, and makes specific Labor Code section 139.2 during the COVID-19 pandemic outbreak:

**Section 36.7 QME Electronic Service Emergency Regulation in Response to COVID-19**

This new section sets forth the process and addresses the need for electronic service of medical-legal reports to prevent interruption in the receipt of medical-legal reports resulting from the COVID-19 pandemic. This regulation will help injured workers and employers continue to move their workers’ compensation claims towards a resolution and avoid additional or undue delay.

1. **Subsection (a)(1)** defines “Electronic Service” , “Electronic Transmission” and “Electronic Notification”. It also prescribes how all three are accomplished.
2. **Subsection (a)(2)** mandates that there must be agreement by all parties to electronic service, and that the agreement must be confirmed in writing.
3. **Subsection (a)(3)** prohibits electronic service for an unrepresented injured worker.
4. **Subsection (a)(4)** establishes that electronic service must be transmitted to the electronic address provided to the physician with the consent to electronic service.
5. **Subsection (a)(5)** establishes when electronic service is complete and sets forth the time period to respond to or act on electronic service.
6. **Subsection (b**) establishes requirements for electronic service of a medical-legal report dealing with an injury to the Psyche.
7. **Subsection (c)** establishes that all applicable terms of regulation 36 also apply to the service of medical-legal reports by electronic transmission.
8. **Subsection (d)** allows for the use of an Affidavit of Proof of Electronic Service and establishes the requirements for that document.
9. **Subsection (e)** mandates that the physician must maintain the original of the medical-legal report, with an original signature, for any medical-legal report served by means of electronic service.

**DETERMINATION OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

Physicians who provide medical-legal evaluations will be able to continue to serve medical-legal reports without requiring the physician or the physician’s staff to always go into the office to complete the clerical functions to allow for physical mail service of the medical-legal report.

The Department of Industrial Relations, Division of Workers’ Compensation, has made an initial determination that the adoption of this regulation will not have a significant, statewide adverse economic impact directly affecting business because it merely changes the manner in which medical-legal reports are served, but does not add to or detract from the charges for providing these reports. The Division of Workers’ Compensation has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submission may include the following considerations: (i) the effect on the cost of providing a

medical-legal report that may be occasioned by service of the report by electronic means; (ii) establishment of differing requirements or timetables for service of the reports that take into account the resources available to business; (iii) simplification of service requirements for medical-legal reporting for qualified medical evaluators; and (iv) the use of electronic service rather than service by mail.

**POLICY STATEMENT OVERVIEW**

The objective of the proposed emergency regulation is to implement the ability of medical-legal evaluators to serve their reports in a manner that does not require the evaluator or their staff to leave their home to accomplish the service during the continuing medical crisis brought on by the COVID-19 virus; and to clarify the interpretation of the relevant statutes and regulations by way of the proposed emergency regulation in a manner that allows for the above referenced actions.

**MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS**

NONE

**MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The Department of Industrial Relations, Division of Workers’ Compensation has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

**FISCAL IMPACT STATEMENT**

A. Cost or Savings to any state agency: NONE

B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE

C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE

D. Other nondiscretionary cost or savings imposed on local agencies: NONE

E. Cost or savings in federal funding to the state: NONE

**STATEMENT OF CONFIRMATION OF**

**MAILING OF FIVE-DAY EMERGENCY NOTICE**

(Title 1, CCR section 50(a)(5)(A))

The Division of Workers’ Compensation sent notice of the proposed emergency action to every person who has filed a request for notice of regulatory action at least five working days before submitting the emergency regulations to the Office of Administrative Law in accordance with the requirements of Government Code section 11346.1(a)(2).