**STATE OF CALIFORNIA**

**DEPARTMENT OF INDUSTRIAL RELATIONS**

**DIVISION OF WORKERS’ COMPENSATION**

**ADDENDUM TO**

**INITIAL STATEMENT OF REASONS**

**Subject Matter of Regulations: Workers’ Compensation**

**Qualified Medical Evaluator Regulations**

**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

**SECTION 36.7**

Enact section 36.7 Electronic Service of Medical-Legal Reports by Medical Evaluators

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

California Code of Civil Procedure Section 1010.6

**Specific technology or equipment required (if applicable)**

Consistent with California Code of Civil Procedure section 1010.6 no specific technologies or equipment are required by these proposed regulations.

**Facts on which the agency relies in support of its initial determination that the regulations will not have a significant adverse impact on business.**

The Administrative Director has determined that the proposed regulations will not have a significant adverse impact on business. This regulation is being adopted consistent with California Code of Civil Procedure section 1010.6 and it does not require any specialized, cumbersome or expensive equipment or software to utilize electronic service.

There are no increased costs to businesses anticipated as a result of this regulation.

The businesses subject to this regulation have the resources necessary to transfer secure files therefore any costs is already included in the businesses existing overhead expenses. If a business does not have a secure way to send the documents electronically, they do not have to use the process provided in this regulation and can continue to serve by US mail (as is the current standard under regulation 36).

Annual cost savings to physicians (QMEs) is estimated at $998,463.08 (see table below). The lifetime benefit is estimated at $9,984,630.80 ($998,463.08 x 10 years.)

**ANNUAL BENEFITS FROM REGULATION**

| Billable Codes[[1]](#footnote-1) | Number of Reports[[2]](#footnote-2)**A** | Estimated Pages Per Report[[3]](#footnote-3)**B** | Cost Per Page[[4]](#footnote-4)**C** | Postage Per Report[[5]](#footnote-5)**D** | Total**E = (AxBxC) + (AxD)** |
| --- | --- | --- | --- | --- | --- |
| ML101 | 12,082 | 30 | $0.055 | $5.00 | $80,345.30  |
| ML102 | 44,950 | 30 | $0.055 | $5.00 | $298,917.50  |
| ML103 | 21,204 | 30 | $0.055 | $5.00 | $141,006.60  |
| ML104 | 49,624 | 50 | $0.055 | $5.00 | $384,586.00  |
| ML 106 | 76,834 | 10 | $0.055 | $5.00 | $426,428.70  |
| empty  | empty   | empty   | Total |  empty  | $1,331,284.10  |
| empty  | empty  | empty  | 75% of Total[[6]](#footnote-6) | empty  | $998,463.08 |

**Statement consistent with California Government Code section 11346.3(b):**

The Administrative Director has determined that the adoption of this regulation will neither create not eliminate jobs within the state. This regulation provides physicians with an alternative means to communicate their reporting to parties and therefore the current jobs that support this process will still be needed and the only change is how the service can be completed.

The Administrative Director has determined that the adoption of this regulation would not create or eliminate business within the state. This regulation provides for a mechanism for service of the medical-legal report and supporting documents, it does not change the obligation of the business to continue to provide the same services.

The Administrative Director has determined that the adoption of this regulation would not expand the business of businesses currently within the state. This regulation only provides for an alternative to current requirements from paper to electronic means this would not result in an expansion of business as it only addresses the processes that govern the administration of the QME program and does not expand the program.

**Article 3. ASSIGNMENT OF QUALIFIED MEDICAL EVALUATORS, Evaluation Procedures**

**Necessity:**

**Section 36.7** allows for the electronic service of the medical-legal report by medical evaluators. Currently regulation 36 provides for service of these documents by US Mail. This regulation is necessary to make the service of medical-legal reports more convenient for all parties involved and to speed up the delivery of medical-legal reports to the interested parties. There is a cost savings to the QME/Physician in not having to print and mail medical-legal reports. Electronic service provides for a more efficient transfer of documents and resulting work flow process improvements including reduced delays related to mailing paper documents and allows for more timely payment of workers’ compensation benefits, and better accountability for service of documents and receipt of documents.

Section (a) provides that a QME or AME may serve the medical-legal report and required documents electronically if certain conditions are met. This section is needed to provide an alternative to the requirements of regulation 36.

Section (a)(1) defines the terms of Electronic Service, electronic transmission and electronic notification. This section is necessary to provide guidance on proper transmission of documents and receipt of documents. This section is necessary to be consistent with California Code of Civil Procedure section 1010.6.

Section (a)(2) provides that parties must agree to the electronic service in writing and provide an electronic address. This section is needed to insure that a party can properly receive documents electronically and has agreed to this method of service.

Section(a)(3) provides that for electronic service of the medical-legal report and other paper must be transmitted to the electronic address maintained by the person or entity to whom it is being served and using the most recent address provided. This section is necessary to identify the proper electronic address of the person or entity being served.

Section(a)(4) provides for the time of when service of the document is complete and the timeframe for an extension of two business days for any duty to act. This section is needed to provide clarity on the timeframe of receipt of documents.

Section(b) provides that with regards to claims of injury to the psyche the terms of section 36.5 still apply however the requirements of section 36.5(b)(6) may be accomplished by electronic service. This section is necessary to insure proper service of a psyche medical-legal report in accordance with the protections of section 36.5.

Section(c) clarifies that the terms of regulation 36 apply to electronic service.

Section(d) provides that the mandatory form 122 may be replaced by an Affidavit of Proof of Electronic Service. The section provides for the information that must be included in the Affidavit of Proof of Electronic Service. This section is necessary to provide a mechanism for service of the necessary elements of form 122 without the need to use the form which may not be readily usable in electronic format.

Section(e) provides that the physician shall maintain an original copy of the documents with original signature. This section is necessary to insure a consistent record of the medical-legal report if there is a dispute regarding authenticity of an electronically served report and documents.

**Consideration of Alternatives:**

No alternatives have been proposed. The proposed adoption of regulation 36.7 provides improvement to the current system provided for under regulation 36. Regulation 36.7 is consistent with California Code of Civil Procedure section 1010.6 and therefore, no more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director.

In accordance with Government Code section 11346.5(a)(13) no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome on affected private persons than the proposed action, or would be more cost-effective and equally and effective in implementing the statutory policy or other provisions of the law.

1. Billable Codes are the various types of reports that a QME issues given the type of service provided; for example a first evaluation versus a second evaluation versus a supplemental report (no evaluation). [↑](#footnote-ref-1)
2. Number of reports is based on Workers Compensation Information System (WCIS) numbers for 2019. [↑](#footnote-ref-2)
3. Pages per report is estimated based on the DWC’s experience with medical-legal reports. [↑](#footnote-ref-3)
4. Cost per page is based on what the DWC found the average printer and paper costs to be. [↑](#footnote-ref-4)
5. Postage per report is based on information received from a medical management company (Exam Works) providing that the average cost of postage for services of a medical-legal report is $2.50 per report. The QME is required to serve at least two parties. ($2.50 x 2 = $5.00) [↑](#footnote-ref-5)
6. As this is an opt-in regulation, it is estimated that 75% of the cases will utilize this electronic service option. [↑](#footnote-ref-6)