

**State of California
Office of Administrative Law**

In re:
Division of Workers' Compensation

Regulatory Action:

Title 08, California Code of Regulations

Adopt sections: 36.7

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3


OAL Matter Number: 2022-0401-01

OAL Matter Type: Regular Resubmittal (SR)

The Division of Workers' Compensation (DWC) in this resubmittal of their certificate of compliance (2020-0504-01E, 2021-0219-02EE, 2021-0920-02EE, 2022-0106-02C) is creating a process to allow participants in the workers' compensation system to receive medical-legal reports via electronic service.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/12/2022.

Date: April 12, 2022


Peggy J. Gibson
Senior Attorney

For: Kenneth J. Pogue
Director

Original: George Parisotto, Administrative
Director

Copy: Nicole Richardson

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

REGULAR

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2022-0401-01	SR

For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

APR 12 2022

1:37 pm

OFFICE OF ADMIN. LAW
2022 APR 1 PM 5:20

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY Division Of Workers' Compensation	AGENCY FILE NUMBER (If any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Electronic Service of Medical-Legal Reports	TITLE(S) 8	FIRST SECTION AFFECTED § 36.7	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Nicole Richardson	TELEPHONE NUMBER (510) 286-0656	FAX NUMBER (Optional) (510) 286-0671
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Administration of QME program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2020-0504-01; 2021-0219-02; 2021-0920-02
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	2022-0106-02
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT § 36.7
TITLE(S) 8 CCR	AMEND
	REPEAL

3. TYPE OF FILING	<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
	<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only	
	<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)	2/28/2022 - 3/15/2022
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5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
	<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Nicole Richardson	TELEPHONE NUMBER (510) 286-0656	FAX NUMBER (Optional) (510) 286-0656	E-MAIL ADDRESS (Optional) nrichardson@dir.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE 3/29/2022
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TYPED NAME AND TITLE OF SIGNATORY George P. Parisotto, Administrative Director

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 12 2022

Office of Administrative Law

§ 36.7 Electronic Service of Medical-Legal Reports by Medical Evaluators

- (a) A Qualified Medical Evaluation or Agreed Medical Evaluation report, or other medical-legal report and required documents may be served electronically as follows:
- (1) For purposes of this section:
 - (A) “Electronic service” means service of the medical-legal report and all documents required by section 36, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by the physician or by an agent of the physician, or through an electronic service provider.
 - (B) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.
 - (C) “Electronic notification” means the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.
 - (2) Electronic service shall be permitted only where the parties agree and a written confirmation of that agreement is made. At the time of giving consent to electronic service, a party or entity shall provide the party's electronic address for the purpose of receiving electronic service.
 - (3) For purposes of electronic service, the medical-legal report or other papers must be transmitted to an electronic address that is the most recent electronic address provided to the physician by the party who consented to accept service electronically. A party whose electronic address has changed has the obligation to file a notice of change of address with the physician and all parties.
 - (4) Service is complete at the time of transmission. Any period of notice and any right or duty to act or make any response within any period or on a date certain after service of the document, shall be extended by two business days.
- (b) For purposes of service of a medical-legal report in claims of injury to the psyche, all of the terms of section 36.5 shall apply to electronic service.

except the service requirements in section 36.5(b)(6) may be accomplished by electronic service pursuant to the terms of this regulation.

- (c) For purposes of service of all medical-legal reports, all of the terms of section 36 shall apply to electronic service, except that the manner of service of the report may be accomplished by electronic transmission, where appropriate, pursuant to the terms of this regulation.
- (d) For purposes of electronic service of all medical-legal reports, the mandatory form 122 (AME or QME Declaration of Service of Medical-Legal Report, see 8 Cal. Code Regs. § 122) may be replaced by an Affidavit of Proof of Electronic Service. The Affidavit of Proof of Electronic Service shall set forth the exact title of the document served in the action, showing (A) the name and residence or business address of the person making the service, (B) that he or she is a resident of, or employed in, the county where the electronic service occurs, (C) that he or she is over the age of 18 years, (D) that he or she is readily familiar with the business' practice for serving electronically, and (E) that the document would be electronically served that same day in the ordinary course of business following ordinary business practices. The Affidavit of Proof of Electronic Service shall be signed under penalty of perjury under the laws of the State of California. The Affidavit of Proof of Electronic Service shall also include all of the following:
- (1) The electronic service address and the residence or business address of the person making the electronic service.
 - (2) The date of electronic service.
 - (3) The name and electronic service address of the person or entity served.
 - (4) A statement that the document was served electronically.
- (e) For purposes of electronic service, the physician shall maintain an original copy of all documents electronically served, pursuant to the terms of section 39.5 of title 8, California Code of Regulations. The documents maintained by the physician pursuant to this section shall contain an original signature.

Note: Authority cited: Sections 133, 139.2, 4627 and 5307.3 Labor Code
Reference: Sections 4060, 4061, 4062.1, 4062.2, 4064, 4067, Labor Code