**STATE OF CALIFORNIA**

**DEPARTMENT OF INDUSTRIAL RELATIONS**

**DIVISION OF WORKERS’ COMPENSATION**

**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

**BACKGROUND TO REGULATORY PROCEEDING**

In the California workers’ compensation system, the physicians who perform medical evaluation examinations and write comprehensive medical-legal reports that are used by injured employees and employers to resolve disputes over medical issues and other benefits in a workers’ compensation claim are called Agreed Medical Evaluators (AMEs) or Qualified Medical Evaluators (QMEs). Pursuant to the statutory authority granted by Labor Code section 139.2, the Administrative Director of the Division of Workers’ Compensation (“DWC”) is charged with overseeing the administration of the qualified medical evaluator program. The Administrative Director’s statutory scope of authority includes the implementation of regulations for the administration of the qualified medical evaluator program. This rulemaking involves an addition to the regulations that govern QMEs, and AMEs.

The proposed changes to these regulations are necessary to implement a system to allow for electronic service of medical-legal reports.

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

None

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

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.

**SUMMARY OF PROPOSED CHANGES**

**Rulemaking Authority**

The Administrative Director’s rulemaking authority is found in Lab. Code §§ 53, 111(a), 133, 139.2 and 5307.3. These sections provide that the Administrative Director has the same rulemaking authority as the ‘head of a department’ as defined by Government Code §11150 et. seq., as well as specific rulemaking authority under Division 4 of the Labor Code. Labor Code section 53 provides, in pertinent part:

“Whenever in Section 1001 or in Part 1 (commencing with Section 11000) of Division 3 of Title 2 of the Government Code “head of the department” or similar designation occurs, the same shall, for the purposes of this code, mean the director, except that in respect to matters which by the express provisions of this code are committed to or retained under the jurisdiction of the Division of Workers’ Compensation….the designation shall mean the Division of Workers’ Compensation, the Administrative Director of the Division of Workers’ Compensation….as the case may be.”

Labor Code section 111(a) provides, in pertinent part:

“(a) The Workers’ Compensation Appeals Board, consisting of seven members, shall exercise all judicial powers vested in it under this code. In all other respects, the Division of the Workers’ Compensation is under the control of the administrative director and, except as to those duties, powers, jurisdiction, responsibilities, and purposes as are specifically vested in the appeals board, the Administrative Director shall exercise the powers of the head of a department within the meaning of Article 1 (commencing with Section 11150) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code)….”

Labor Code section 133 provides, in pertinent part:

“The Division of Workers’ Compensation, including the Administrative Director….shall have power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it under this code.”

Labor Code section 5307.3 provides, in pertinent part:

“The administrative director may adopt, amend, or repeal any rules and regulations that are reasonably necessary to enforce this division, except where this power is specifically reserved to the appeals board or the court administrator.”

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

**Section 36.7 Electronic Service of Medical-Legal Reports by Medical Evaluators**

Specific Purpose of Section 36.7:

This section is added as the permanent iteration of an emergency regulation enacted by the DWC on May 14, 2020. The regulation allows for the electronic service of medical-legal evaluation reports by medical evaluators.

Necessity:

**Section 36.7** allows for the electronic service of medical-legal report by medical evaluators. The regulation defines electronic service, electronic transmission, and electronic notification for purposes of the new rules for service of reports. Requirements are established for utilization of electronic service, drafting of proof of service for electronic service and the effect of the new regulation on other service regulations.

This addition is intended 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.

Consideration of Alternatives**:**

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.