**STATE OF CALIFORNIA**

**DEPARTMENT OF INDUSTRIAL RELATIONS**

**DIVISION OF WORKERS’ COMPENSATION**

**supplemental initial statement of reasons**

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

**Qualified Medical Evaluator Regulations**

**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

**SECTIONS 1, 11, 11.5, 14, 33, 50, 51, 55, 55.1 & 63**

Amend section 1 Definitions

Amend section 11 Eligibility Requirements for Initial Appointment as a QME

Amend section 11.5 Disability Evaluation Report Writing Course

Amend section 14 Doctors of Chiropractic Certification in Workers’ Compensation

 Evaluation

Amend section 33 Unavailability of QME

Amend section 50 Reappointment Requirements and Application Form

Amend section 51 Reappointment: Failure to Comply with Time Frames

Amend section 55 **Reappointment: Continuing Education Programs**

**Add section 55.1 Reappointment: Continuing Education Programs**

Amend section 63 Denial of Appointment or Reappointment

**AGENCY REASON FOR SUBMITTING SUPPLEMENTAL INITIAL STATEMENT OF REASONS.**

The Administrative Director has submitted this Supplemental Initial Statement of Reasons to augment the Initial Statement of Reasons originally published in this Rulemaking on January 20, 2023.

**pre-rulemaking activity prior to notice of rulemaking.**

On April 29, 2021, the Division of Workers Compensation published a Newsline posting announcing the opening of a Public Forum related to the proposed amendments to the QME regulations that are the subject of this rulemaking. The publication contained a link to the webpage for the Public Forum, a synopsis of the amendments to the regulations, and a link to the full text of the proposed regulations. The announcement also detailed information that the Public Forum would close on May 14, 2021.

The webpage for the Public Forum provided a link for the electronic submission of comments, and an address for the submission of mailed comments, and a link to the text of the proposed regulations. It also announced that the Public Forum would close on May 14, 2021, and all comments should be submitted by that date.

As a result of the Public Forum, nine comments were received from stakeholders. These comments were considered in the final formulation of the proposed regulatory text.

**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 these proposed regulations will not have a significant adverse impact on business.

The proposed regulations institute new training requirements for QMEs that are expected to affect approximately 2400 businesses. This is based upon the number of physicians who are currently certified as QMEs. The regulations will affect their businesses in that the training that they have to receive in the form of continuing education will change. However, the change is de minimis. The number of hours for continuing education is increased by four, and new subject matter areas are added to address perceived instances of possible gender bias. The number of educational hours that chiropractors are required to complete to become initially certified as QMEs are reduced.

Currently, there are approximately 20 certified providers of QME continuing education. It is anticipated that these establishments will easily incorporate the new hourly training requirements and the new subject matter. Therefore there is no reasonably expected business creation or elimination as a result of the training requirements in the regulations. With respect to the chiropractic hours, the reduction in the amount of hours necessary to become certified may encourage additional business creation in terms of additional entities offering the course. However, any increase in business related to this ease of presentation of the course with reduced hours cannot be reasonably predicted. It is anticipated that existing providers may begin to offer the chiropractic course which would not result in the creation of new businesses.

As a result of all of the above, it is not anticipated that these regulations will in any way significantly affect the creation or elimination of jobs in the state of California.

**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 1. GENERAL**

**Section 1. Definitions.**

Specific Purpose of Section 1:

This section contains definitions for terms used in sections 1 through 159, the regulations governing QMEs, in Title 8 of the California Code of Regulations.

Necessity:

**Subsection (ii)** is added to provide a definition for “electronic address" to facilitate the implementation of electronic service of documents pursuant to the Civil Code, Labor Code and additions to Title Eight, California Code of Regulations. Encryption is necessary to protect the integrity of the message. Without encryption, the message itself can be hacked and subject the receiver of the message to risk infection of their device with viruses and/or ransom ware upon opening the transmission.

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.

**Article 2. QME Eligibility**

**Section 11. Eligibility Requirements for Initial Appointment as a QME.**

Specific Purpose of Section 11:

The purpose of this section is to set out with specificity the criteria for eligibility for appointment as a QME for various types of health care providers within the definition of ‘physician’ under Labor Code section 3209.3, consistent with the conditions specified in Labor Code section 139.2.

Necessity:

**Subdivision (a) (4)** has been amended to reduce the number of hours of chiropractic training necessary to qualify for certification as a QME. This change will promote consistency in the education among QME candidates who must complete disability writing course requirements for appointment and reappointment as QMEs. The ability to offer a weeklong 44 hour in person class instruction for chiropractors has severely decreased over the years. There is only one education provider offering this instruction in the current format. Changing the amount of hours necessary for appointment for chiropractors will remove an outdated barrier to physicians coming into the QME program. The proposed hourly requirement of 25 hours of instruction with 13 hours of actual in person class time allows for the course to be given over a weekend, as opposed to an entire week. In addition the subsection is amended to delineate how long the 25 hour class certification will last for purposes of QME eligibility. Not all candidates pass the test on the first try so a shelf life needed to be added to the 25 hour class certification.

**Subdivision (f) (4)** has been amended to increase the amount of time for the completed forms for the competency examination to be delivered to the DWC. The amount of applications received has increased in recent years and the addition of more days for staff to process these applications is necessary as a result of the increased demand for taking the test.

**Subdivisions (f) (5)** & **(f) (6)** have been amended to add gender-neutral pronouns to avoid any perceived insult to members of the public at large.

**Subdivision (h)** has been added to this regulation to allow for the requirement of two hours in anti-bias training as a requirement to become a QME. The subdivision sets out the specific criteria that is required for the content of the anti-bias training.

The requirement was added to address the perception that there may be unconscious gender bias that manifested in workers compensation medical evaluations that led to disparate outcomes for injured workers. Two hours of coursework for medical evaluators to address any possible unconscious gender bias was arrived at after stakeholder meetings as a reasonable starting point to ensure that gender bias did not affect workers’ compensation outcomes. Discrepancy in outcomes based on gender were readily apparent when it came to the issues of apportionment and rating determinations. That is why the new requirement specifically addressing these areas were added to the regulation. An after course examination was added to the regulations to ensure that course material was understood by participants and the course experience would be incorporated in the physician’s approach to any future medical evaluations.

**Subdivision (h)(3)** requires that the anti-bias training include an example of a rating of permanent disability relating to industrial breast cancer because it was determined that discrepancies in outcomes by gender are usually typified by the difference in the rating for breast cancer as opposed to other cancers that are not as gender specific. If the ratings on breast cancer cases can be brought in line with other cases it will dispel any perception that there is gender inequality in the rating process.

**Subdivision (h)(4)** requires that the anti-bias training include a test at the end of the course with a 70% pass rate to receive credit for the course to ensure that the material is adequately absorbed by the participants. The addition of a test and a minimum pass percentage accomplishes this goal. Allowing the administrative director to audit or monitor the examination test scores ensures that the courses are being conducted pursuant to the requirements of the regulations, and that the participants in the course activity are sufficiently qualified in the subject matter.

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.

**Section 11.5. Disability Evaluation Report Writing Course.**

Specific Purpose of Section 11.5:

The purpose of this section is to set out the requirements for the accreditation of education providers and the course curriculum expectations for the disability writing course that all QMEs must take and pass prior to appointment, as required by Labor Code section 139.2(b)(1).

Necessity:

**Subsection (j)** is amended to require that six hours of instruction must consist of in person instruction. In person instruction including didactic sessions in group discussion is more likely to ensure greater absorption of course content by the participants. Open discussion with course providers including feedback from instructor to participant and vice versa, will ensure incorporation of course content into the medical evaluator’s practice. As a result, a minimum in person hour requirement is designed to improve the effectiveness of the continuing education provided and therefore translate into better report quality for medical-legal evaluations.

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.

**Section 14. Doctors of Chiropractic: Certification in Workers' Compensation Evaluation**

Specific Purpose of Section 14:

This section outlines the required course content for doctors of chiropractic who seek appointment as a QME on the basis of completion of an approved course in disability evaluation report writing, as permitted by Labor Code section 139.2( b)(4)(B).

Necessity:

**Subsection (b)(4)(E)** is added to require two hours of anti-bias training in compliance with the changes to Section 11(h). The requirement was added to address the perception that there may be unconscious gender bias that manifested in workers compensation medical evaluations that led to disparate outcomes for injured workers. Two hours of coursework for medical evaluators to address any possible unconscious gender bias was arrived at after stakeholder meetings as a reasonable starting point to ensure that gender bias did not affect workers’ compensation outcomes. Discrepancy in outcomes based on gender were readily apparent when it came to the issues of apportionment and rating determinations. That is why requirements specifically addressing these areas were added to the regulation. An after course examination was added to the regulations to ensure that course material was understood by participants and the course experience would be incorporated by the physicians in any future medical evaluations.

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.

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

**Section 33. Unavailability of QME.**

Specific Purpose of Section 33:

This section describes the circumstances in which a QME may request and obtain a change of status from active to unavailable for a period up to 90 days. It also describes the rights and procedures of a party to obtain a replacement QME when he or she finds that the selected QME is not available to schedule an appointment within at least 60 days of the request for an appointment.

Necessity:

**Subsection 33(a)** has been amended to make minor clerical corrections, and to have a new category of good cause for unavailability when a physician is unable to schedule appointments within the regulatory time limit because of existing appointments. The allowed period of unavailability is increased from 90 days per calendar year to 120 days per calendar year. The time period for the maximum number of days for unavailability was increased to account for the fact that due to the demand for evaluations in relation to the number of available medical evaluators, any physician may find it necessary to become unavailable in order to address the number of appointments already scheduled and ensure that the reports generated by those evaluations are delivered in time. Allowing more flexibility for the physicians in terms of how long they can be unavailable allows for a physician to take advantage of the unavailability statute whenever the press of business is such that continuing to take new appointments may jeopardize the on-time delivery of reports for existing evaluations.

**Subsection 33(d)** has been amended to replace a reference to a repealed regulation with a new reference to an amended regulation. The subsection was also amended to take into account the increase in the number of days of unavailability from 90 to 120 as a result of the amendment to subsection 33(a).

**Subsection 33(f)** has been amended to make minor clerical corrections. The subsection was also amended to take into account the increase in the number of days of unavailability from 90 to 120 as a result of the amendment to subsection 33(a).

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.

**Article 5. QME Reappointment**

**Section 50. Reappointment: Requirements and Application Form**

Specific Purpose of Section:

This section describes the requirements for QMEs to apply for reappointment.

Necessity:

**Subsection (d)** is added to allow for the acceptance on the application for reappointment of an original signature, an electronic signature in compliance with Civil Code section 1633.2 or a digital signature in compliance with Government Code section 16.5. This subsection was added to address the increasing requests for the ability to file or submit the application for reappointment via electronic means. Adding the ability to accept an electronic or digital signature facilitates this process. The requirement that the QME must personally review the content of and verify the accuracy of the document to which the original or electronic signature is affixed, is required so that the QME is personally responsible for any future reliance on the fact that the QME was cognizant of the content of the document at the time of signing.

**Subsection (e)** is added to require that a QME be in compliance with all statutes, duties and regulations relevant to the QME program in order to be reappointed as a QME. This regulation is necessary to remove any ambiguity in the proper interpretation of Labor Code section 139.2 as it relates to the requirements for reappointment of a QME. It makes clear the authority granted to the Administrative Director, pursuant to Labor Code section 139.2 to deny reappointment to a QME who is in violation of any of the Administrative Director’s regulations or relevant statutes at the time the QME applies for reappointment. This subsection was added to make clear the parameters of the Administrative Director’s authority in the reappointment process. There had been a perception in the Workers’ Compensation Community that only certain grounds outlined in Labor Code Section 139.2 specifically speaking to the reappointment process were available for consideration by the Administrative Director in the reappointment process. This misconception led to a belief that the Administrative Director could not deny reappointment for the very same criteria that could cause termination or revocation of QME certification. This subsection dispels that misconception by outlining all of the grounds that are subject to consideration by the Administrative Director in the reappointment process.

**Subsection (f)** is added to require that a QME must cooperate with any investigation into the QME’s actions or practice that is instituted by the Administrative Director or the Administrative Director’s designate. The provision makes clear that failure to cooperate with such an investigation is grounds for denial of an application for reappointment of the offending QME, at the discretion of the Administrative Director. This subsection was added to ensure the cooperation of QMEs with any investigations conducted by the QME Discipline Unit of the DWC. This subsection removes the implied option that a physician might take when notified that an investigation has been opened into their practice as a QME. In the absence of a specific regulation to the contrary, the QME may simply choose not to cooperate with the investigation and thereby stymie the investigative process. The specific regulation removes that possibility.

**Subsection (g)** is added to require that a QME seeking reappointment must submit their two most recent medical legal evaluation reports where the injured worker was found to have reached the status of maximum medical improvement. This allows for the Administrative Director to monitor the quality of report writing as required by Labor Code section 139.2 (i). Labor Code section 139.2 (i) requires that the Executive Medical Director monitor report quality for QMEs and prepare an annual report to the Administrative Director on report quality. The Agency has instituted a mechanism for review of QME reports to facilitate that process. This subsection requires submission of reports by physicians upon reappointment to serve as one source of material for the review of report quality to satisfy the requirements of the statute. The physician is excused from submitting reports if they have not completed any Comprehensive Medical Legal Evaluations or Follow-Up Medical Legal Evaluations during their previous two-year certification period. These are the evaluations that generate the reports that are subject to review by the Agency. The physician may submit a statement of explanation that verifies they have not generated any reports that are subject to the submission requirements during their last term as a QME. The statement of explanation verifies why the physician is excused from submitting the reports.

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.

**Section 51. Reappointment: Failure to Comply with Time Frames.**

Specific Purpose of Section 51:

This section states that failure of a QME to comply with the timeframes in section 34 (Appointment Notification) or 38 (time for completion of the report) on three occasions in a year may result in denial of reappointment.

Necessity:

Section 51 is amended to add new subdivisions that replace existing regulations 52, 54, 56 and 57 which are being repealed. New subdivisions are added to clarify the criteria upon which the Administrative Director can base a decision to deny reappointment to a QME. The title of the regulation is also amended to account for these changes. The forms of certain existing regulations have been changed to provide clarity in interpreting the regulations.

**Subsection 51(a)(5)** is added to maintain the provisions of the previous regulation section 54 that authorized the Administrative Director to deny reappointment to a QME who has had more than five evaluations rejected by a Workers’ Compensation Judge or the Appeals Board within a two year period. The new regulation is broken up into three distinct parts to provide clarity in the interpretation of the regulation. The old conditions subsequent to the application of the regulation are broken up into two distinct parts in the new regulation. References to subparts of Labor Code section 139.2(j) that are unnecessary to the interpretation of the regulation are removed from new subpart (A). New subpart (B) separates out the second condition subsequent for enforcement of the regulation.

**Subsection 51(a)(6)** is added to require that a QME applying for reappointment must be in compliance with the Medical-Legal fee schedule as a condition of reappointment. The regulation requires three instances of a violation in order to be enforced. This condition was added to make sure that inadvertent mistakes with respect to the application of the fee schedule will not be punished. The requirement that three instances of violation must be shown ensures that there is evidence of an actual pattern and intent to violate the billing schedule.

**Subsection 51(a)(7)** is added to maintain the provisions of the previous regulation section 56 that authorized the Administrative Director to deny reappointment to a QME who has been found in violation of any order or ruling by a Workers’ Compensation Judge or the Appeals Board. A condition has been added to the enforcement of the regulation requiring that the judicial order that is violated is a final order. This would ensure that a QME who is appealing the order will not be penalized during any period that the physician is exercising their due process right to challenge the validity of the order.

**Subsection 51(a)(8)** is added to maintain the provisions of the previous regulation section 57 that authorized the Administrative Director to deny reappointment to a QME who performs a QME evaluation or examination without valid QME certification. The language of the regulation was changed to remove “evaluation” and focus the prohibition on two distinct aspects of the QME process. This change was made for purposes of clarity and to allow a QME whose certification has expired to still perform an evaluation in the sense that they can author a supplemental report or be deposed regarding a prior examination or evaluation performed while the QME was actually certified.

**Subsection 51(a)(9)** is added to make clear that the Administrative Director is authorized to deny reappointment to a QME who has provided false information on or with an application or application for reappointment as a QME. The appointment application and the reappointment application forms for certification as a QME require that the applicant provide essential information to the certification process. Some of this information is actually provided under penalty of perjury. The decision to certify the QME relies heavily on information provided in the application forms. This regulation ensures that the QME community and the prospective QME community are made aware that failure to provide truthful information will lead to denial of the application.

**Subsection 51(a)(10)** is added to make clear that the Administrative Director is authorized to deny reappointment to a QME who has failed to render expert opinions or conclusions without regard to an injured worker’s race, sex, national origin, religion or sexual preference. This subsection is added in an attempt to ensure that there are no instances of bias or discrimination in the QME evaluation process. It is also added to give notice that any evidence of bias or discrimination can be grounds for denial of a reappointment application. It makes clear that a violation of the ethical duties contained in existing regulation § 41(c)(3) can be grounds for denial of an application for reappointment.

**Subsection 51(a)(11)** is added to make clear that the Administrative Director is authorized to deny reappointment to a QME who has participated in any activity that constitutes a conflict of interest under Labor Code sections 139.3 or 139.31; or that constitutes a violation of the reporting requirements of Labor Code § 4628. Labor Code § 4628 is an anti-ghost writing statute that also details requirements for QME reports. Labor Code § 139.3 details the prohibition against referral to persons with whom the referring physician has a financial interest; and Labor Code § 139.31 details the exceptions to Labor Code § 139.3. This regulation is added to make clear that a QME who engages in a violation of any of these statutes is subject to denial of reappointment based upon those violations.

**Subsection 51(a)(12)** is added to make clear that the Administrative Director is authorized to deny reappointment to a QME who has participated in three or more instances of activity that constitutes rude behavior to an injured worker during or in connection with an evaluation. This regulation is added to give notice to the QME community that a violation of the ethical obligation to remain professional in all dealings with the injured worker population can constitute grounds for denial of an application for reappointment. It makes clear that continued violations of the ethical duties contained in existing regulation § 41(a)(5) can be grounds for denial of an application for reappointment.

**Subsection 51(a)(13)** is added to make clear that the Administrative Director is authorized to deny reappointment to a QME who has participated in an intentional activity that causes physical harm or injury to the injured worker. This regulation is added to give notice to the QME community that a violation of the ethical obligation to cause no harm to the injured worker population can constitute grounds for denial of an application for reappointment. . It makes clear that a violation of the ethical duties contained in existing regulation § 41(a)(4) can be grounds for denial of an application for reappointment.

**Subsection 51(a)(14)** is added to make clear that the Administrative Director is authorized to deny reappointment to a QME who has failed to notify the Administrative Director within 90 days that the physician’s license to practice has been encumbered by suspension or probation by the relevant licensing authority. The 90 days to notify the Administrative Director shall run from the effective date of the order imposing the suspension or probation. This regulation is added to reinforce and set parameters on existing obligations of the QME population. Both the application to be appointed as a QME and the application for reappointment contain promises under penalty of perjury to inform the administrative director that the physician’s license to practice has been encumbered by suspension or probation. This regulation informs the QME community that failure to do so in the time limit set out in the regulation is grounds for denial of the application for reappointment as a QME.

**Subsection 51(a)(15)** is added to make clear that the Administrative Director is authorized to deny reappointment to a QME who has failed to comply with the continuing education requirements in section 55. Upon applying for reappointment as a QME existing and proposed regulation 55 require that the physician complete a finite number of hours in continuing education and outline the subject matter for that continuing education. This regulation is added to give notice to the QME community that failure to fulfill that requirement is in fact grounds for denial of the application for reappointment. The current regulation 55 and the proposed regulation 55 do not specifically articulate this consequence for failure to comply with the regulation.

**Subsection** **51(b)** is added to indicate that the notice and appeal procedures in the referenced regulations apply to the reappointment process. Existing regulation 61 sets out hearing procedures but is not specifically made applicable to the reappointment process in the existing regulation. The proposed new regulation 63 has been amended to provide clarity. This regulation subpart is added to give unequivocal notice that the reappointment procedure is subject to the provisions of regulations 61 and 63. The procedures outlined in regulations 61 and 63 ensure that the reappointment process complies with the requirements of the Administrative Procedures Act and provides the physician due process and notice throughout the reappointment procedure.

**Subsection** **51(c)** is added to indicate that the Administrative Director is authorized to require a QME to submit to probationary status, in lieu of denial, as a condition of reappointment. Labor code section 139.2 (d) authorizes the Administrative Director to exercise broad discretion in deciding whether or not to reappoint a physician to the QME program. Regulation 65 sets out the sanctions guidelines and parameters for probationary status for a QME. This subpart is added to grant the Administrative Director the ability to reappoint a physician on probationary status. There is no current specific regulation indicating that the Administrative Director has this ability. This allows the Administrative Director more discretion in granting reappointment to physicians who may be in violation of a statute or regulation that might otherwise militate against reappointment. It allows the Administrative Director to consider extenuating circumstances on an individual case-by-case basis. The regulation also provides parameters for the exercise of the Administrative Director’s discretion related to the provisions of regulation 62.

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.

**Section 55. Reappointment: Continuing Education Programs.**

Specific Purpose of Section 55:

This section explains the requirement that Qualified Medical Evaluators must complete 12 hours of approved continuing education within the 24 month period before applying for reappointment, how the QME may satisfy that requirement, and how providers of continuing education may apply for approval to provide such education hours.

Necessity:

**Section 55** is amended to change it back to the original text of section 55 before any proposed amendment was made to the text by virtue of this proposed regulatory action. The title of section 55 was changed to reflect the fact that section 55 only applies to applications for reappointment that are received before April 1, 2026. This change was made to ensure that the regulations would continue to reflect the requirements for applications for reappointment received prior to the two-year phase in date for the new requirements of the added regulation 55.1. A sentence was added to the first paragraph of section 55 to reflect the fact that it will only continue to apply to applications for reappointment received and/or submitted before April 1, 2026.

The intent to provide a phase-in period for the new hour and subject matter requirements for reappointment as a QME that matchs the certification period of appointment as a QME was to provide the QME population an adequate time to comply with the new requirements.

**Section 55.1. Reappointment: Continuing Education Programs.**

Specific Purpose of Section 55.1:

This section explains the requirement that Qualified Medical Evaluators must complete 16 hours of approved continuing education within the 24 month period before applying for reappointment, how the QME may satisfy that requirement, and how providers of continuing education may apply for approval to provide such education hours.

Necessity:

This new section was added to provide clarity with respect to the continuing education requirements for qualified medical evaluators after the proposed amendments to the regulations are effective on April 1, 2024. The new section is added to differentiate between the requirements prior to the effective date of the regulations and after the phase in date for compliance with the new continuing education hours and subject matter requirements. Although it is a completely new regulation, it actually contains the text of original regulation 55 as amended in the originally proposed regulations submitted with the original Initial Statement of Reasons. The reasons for those amendments as they appear in the new regulation 55.1 are augmented as follows:

**Subsection (a)** is added to expand the definition of “on-site programs” to include virtual learning environments that can be monitored by the program provider in real time and are supplemented with the same testing requirements as those found in distance learning programs. The subsection is also amended to allow for distance learning programs to be accredited for up to eight hours per program. This change is implemented to account for the increase in total continuing education hours from twelve to sixteen. The change continues to allow for completion of half of the education hours in any one distance learning program.

**Section 55.1** adds a new **subsection (b)** that expands the required continuing education hours for QME reappointment from 12 to 16 and delineates the minimum number of hours required in certain specified subject matter categories of continuing education. The expanded hour requirement will allow for the addition of educational topics that are identified as necessary through the study of medical-legal report quality mandated by Labor Code section 139.2(i), and to alleviate possible bias in medical-legal reporting. The expansion of recognized topics related to disability evaluation allow for QME training in explicit and implicit bias mitigation, and compliance with regulatory billing and procedural requirements related to practice as a QME. The anti- bias training is calculated to produce medical-legal evaluation reports that are neutral with respect to all protected categories of race, gender, disability or sexual preference.

The current efforts of the report quality review committee indicate that there is a need for improvement in the quality of reports produced by QMEs. One of the ways immediately identifiable to produce this change is to make sure that the QME population is better educated. That is the reason for the expansion in hours of required continuing education. In addition, certain areas of specified study have been identified as candidates for mandatory training for QMEs. These areas include disability impairment rating [(b)(1)], medical legal report writing [(b)(2)], anti-bias training [(b)(3)], review of relevant case law [(b)(4)], and the proper application of the medical legal fee schedule or training in regulatory adherence [(b)(5)]. Mandating minimum hours in these areas of training is calculated to improve the quality of reports produced by the QME community. Anti-bias training is added as a required subject matter because of a perception in the Workers’ Compensation Community as a whole that there was implicit gender bias in the system; especially as it relates to report writing. This was manifested in the application of principles of apportionment as between the genders, and the impairment ratings that were derived as between the genders. There appeared to be a discrepancy that disfavored female injured workers. Adding required course material in the field of anti-bias training is designed to alleviate any perception or actual gender bias in the system. Requiring a specific example in the area of breast cancer was included because this was the area identified as most susceptible to disparity in impairment ratings. Training in the proper application of the medical legal fee schedule and in regulatory compliance is added because of the recognized frequency in discipline complaints related to these areas. Allowing for and requiring training in these areas is anticipated to reduce the frequency of complaints against QMEs related to these topics.

Existing **subsections (b)** through **(r)** of old Section 55 are re-designated **(c)** through **(s)** to allow for the addition of the new **subsection (b)**.

Language is added to new **subsection (e)** to allow for continuing education credit for training in proper QME billing practices and adherence to process regulations related to practice as a QME. This language was added to ensure that QMEs can receive credit for training in the specific subject matter areas. The inability to receive training in these areas may have made QME’s reluctant to actually undertake training in these areas. However, violating the provisions of the medical legal fee schedule and the regulations related to clerical requirements surrounding appointment setting, appointment notification, and maintaining a QME office are frequently the subject matter of QME discipline actions. Incentivizing training in these areas is expected to diminish the cases of discipline as a result of the QME’s lack of knowledge in these areas. The language also limits the accreditation of matters related to medical practice to only those regulated by the Administrative Director. The added language makes clear that the expansion of credit allowance for clerical content is limited to that which has been approved by the Administrative Director as related to the practice as a QME. The added language also allows the Administrative Director to expand the areas of accredited continuing education subject matter as the need may arise as a result of the focused study on the effectiveness of report writing mandated by Labor Code § 139.2(i) and the provisions of new subsection 55(b)(6)(B).

**Subsection (e)** also contains changes to provide consistency with other subsection or section delineation that has changed as result of the addition of the new regulation.

Section 55.1 contains the amendments to old section 55 that were originally proposed and adopted as a result of the first 45 day comment period and the first 15 day comment period. The new section 55.1 also contains changes proposed for purposes of the second 15 day comment period as detailed in the Notice of Second Modification of Text.

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.

**ARTICLE 6. QME Discipline**

**Section 63. Denial of Appointment or Reappointment.**

Specific Purpose of Section:

Section 63 is intended to clarify the procedures that govern the denial, and any appeal of the denial, of an application filed with the Administrative Director. This section applies to all applications for appointment or reappointment as a Qualified Medical Evaluator.

Necessity:

**Section 63** was amended to provide clarity. One change to the regulation was made as result of the amendment to regulation 51(c), allowing for the appointment or reappointment of a QME applicant to probationary status. The wording had to be changed to allow for the appeal of a denial of appointment or reappointment; or an appeal of an appointment to the probationary status. It was also amended to allow for the hearing procedures as indicated in section 61 to apply to an action that is initiated by virtue of a Statement of Issues dealing with the denial of an appointment, reappointment or the decision to appoint or reappoint into a probationary status. This authorizes the Administrative Director to appoint hearing officers for these procedures as well as for procedures that are initiated by virtue of an Accusation, when a QME is subjected to discipline during their appointment period. The change to the regulation grants the Administrative Director the ability to designate hearing officers for both tracks, reappointment and discipline.

**Subsection 63(a)** is amended to allow for the Administrative Director’s ability to reappoint a QME to a probationary period as a condition of reappointment. This subdivision is also amended to add procedures that allow the Administrative Director to assign hearings to a hearing officer to act as an administrative law judge, notwithstanding Government Code §11502, in cases where the hearing relates to the denial of appointment or reappointment of a QME. The Administrative Director has specific regulatory authority to engage in this process with respect to disciplinary hearings. There is no current specific explicit authority to engage in this process with respect to hearings related to the denial of the appointment or reappointment of a QME. The amendment grants this specific authority.

The Administrative Director is statutorily directed to provide an adjudicative proceeding in the form of a hearing for most matters of discipline. Due process requires that the Administrative Director provide an adjudicative proceeding upon the denial of appointment or reappointment of a QME.

An adjudicative proceeding is an evidentiary hearing for determination of facts under which the agency formulates and issues a decision (See Government Code §11405.20). For state agencies, usually these hearings must be conducted pursuant to the Administrative Procedures Act (APA), which ensures constitutional requirements for formal hearings including due process of law [(See US Const. amend XIV, §1; Cal Const. art I, §7(a)]. Government Code §11502(a), provides that all hearings of state agencies required to be conducted under this chapter [the APA], shall be conducted by administrative law judges (ALJ) on the staff of the Office of Administrative Hearings. However, §11501(a) qualifies this requirement by stating that this chapter [the APA] applies to any agency as determined by the **statutes relating to that agency**.

The only statutory reference to discipline hearings for Qualified Medical Evaluators conducted by the DWC is found in Labor Code §139.2. However this statutory reference does not make it mandatory that the DWC conduct the hearings using ALJ’s provided by the Office of Administrative Hearings. In fact, California Code of Regulations, Title 8 (8 CCR) §61 dealing with the hearing procedures, specifically reserves the right of the Administrative Director to assign the hearing to a hearing officer to act as an administrative law judge, notwithstanding Government Code §11502. The amendment to subdivision 63(c) extends this authority of the Administrative Director to hearings related to the appointment or reappointment of a QME.

It is anticipated that the authority to assign hearings to a hearing officer will allow the post deprivation hearing to take place sooner than what is now available based upon the calendars of the various offices of the Office of Administrative Hearings. Providing applicants with quicker hearing dates ensures that they are provided their proper due process rights.

**Subsection 63(b)** is amended to maintain relevant sections of former subdivision 63(a). The language of former subsections (1) and (2) are combined to form the new subsection (b). Any changes or deletions in the language of the former subsections are made for purposes of clarity without any subsequent change in the requirements provided by the former subsections.

**Subsection 63(c)** is amended to maintain relevant sections of former subdivision 63(b) and to detail the procedures for judicial review of the Administrative Director’s decision after the hearing encompassed in amended subdivision 63(a). The language of former subsection (c) is amended to add clarity to the interpretation of the subsection. There is also language added to provide flexibility and allow the Administrative Director to exercise discretion in pending litigation headed for a hearing by granting appointment or reappointment prior to the actual hearing. This language is added to allow for the Administrative Director to consider mitigating circumstances in each individual case that will limit the number of matters going to a hearing.

**Subsection 63(d)** is amended to add a minor clerical correction.

**Subsection 63(e)** is added to enumerate conditions related to a QME’s failure to comply with Labor Code section 139.2, irregularities with the physician’s licensing, or a physician’s violation of Labor Code section 139.21 that will make the physician ineligible for reappointment as a QME. This section is added to delineate instances where termination of a QME’s certification status or denial of appointment or reappointment can be mandated by the Administrative Director without the right of appeal or the right to a hearing on the matter. This subsection is added to clarify in regulatory form the enumerated instances where no right to appeal or hearing is granted to the QME as a result of the operation of statutes.

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.