| **QME PROCESS REGULATIONS** | **RULEMAKING COMMENTS**  **3rd 15 DAY COMMENT PERIOD** | **NAME OF PERSON/ AFFILIATION** | **RESPONSE** | **ACTION** |
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| 35(i) | Commenter states that he works with a number of psychiatry/psychology QMEs and opines that the move to the new fee schedule has drastically impacted the ability of providers to produce quality reports because employers/defendants have an obvious incentive to not obtain . . .  and therefore not be required to produce . . . medical records.  Commenter notes that in the two years prior to the introduction of the new Med-Legal Fee Schedule (calendar year 2019 and 2020) the average initial evaluation included 960 pages of records.  In the first full year after the new MLFS (2022) the average initial evaluation dropped to 668 pages.  In 2023 year to date the provided records continue to dwindle, and so far this year average is down to 581.  In 2023, year-to-date, commenter has seen 48 reports where less than 20 pages of "attested" records were provided, compared to 16 in  the two year period from 1/1/2019-12/31/2020.  Commenter opines that while some of this may be attributable to good faith efforts not to send duplicate records, the overwhelming majority of the feedback is that pertinent, and often critical, records are simply not being provided.  Frequently parties are not providing PTP, other treating docs, applicant depositions, and employment records when the parties clearly need or expect a Rolda/Fujimoto analysis.  Commenter states that since the new MLFS went into effect QMEs frequently show up at an evaluation only to find that the applicant has been treating with providers (often psych providers in a psych case) for  months, sometimes years, for whom the QME has no records. All too often the only source of information is the applicant's  account and testing.  Commenter opines that all the new educational requirements in the world cannot help the QME when the substantial medical evidence they need to support their opinions and reporting are withheld by the parties.  Under the current rules when the doctor shows up at the evaluation and the applicant says they see providers X, Y, and Z for the injury, and the records were not provided the QME can obtain them. If the claims administrator had done what they are required to do, there would be no missing records in the file. Commenter states that the problem is that the parties have  simply stopped obtaining or providing the records. The claims administrator/employers are simply shirking their duties, because under Section 35 they are required to provide:  *(1) All records prepared or maintained by the employee's treating physician or physicians;*  *(2) Other medical records, including any previous treatment records or information, which are relevant to determination of the medical issue(s) in dispute;*  *(3) A letter outlining the medical determination of the primary treating physician or the compensability issue(s) that the*  *evaluator is requested to address in the evaluation, which shall be served on the opposing party no less than 20 days in advance of the evaluation;*  Commenter opines that the proposed deletions to Section 35(i) remove the QMEs ability to obtain the critical records that the parties were required, but failed, to provide.  Commenter objects to the deletion of the following language:  “In the event that a party fails to provide to the evaluator any relevant medical record which the evaluator deems necessary to perform a comprehensive medical-legal evaluation, the evaluator may contact the treating physician or other health care provider, to obtain such record(s). In order for any record procured by the  physician under this section to be considered and counted as a record for record review pursuant to subsection 9793(n), the physician must first obtain agreement of the parties that the record was necessary and relevant to  settle a medical issue in dispute.”  Commenter opines that if the records that administrators/employers are already required to provide were  actually being provided, section 35(i) would have remained unused as it largely had until the new fee schedule incentivized employers and administrators to flout their duties to provide records. The rules do not say "all medical records that the administrator felt like obtaining." Section 35 very clearly says they "shall provide . . . *(1) All records prepared or* *maintained by the employee's treating physician or physicians;" and " (2) Other medical records, including any previous*  *treatment records or information, which are relevant to determination of the medical issue(s) in dispute[.];"*  Commenter opines that if it is the goal to have better reports, DWC would do well to provide the QMEs with better data from which to work an the division should ensure that administrators and employers are fulfilling their obligation to obtain and provide the required  records. | Brett Freeburg  December 18, 2023  Written Comment | The Administrative Director disagrees.  The Administrative Director was unaware of a reduction in the amount of pages of medical records sent to QMEs. Indeed, anecdotal evidence indicates that the number of pages of medical records have increased. The act of not sending relevant medical records to the evaluator is antithetical to the interest of the parties, as the resulting QME report will not amount to Substantial Medical Evidence.  Despite the fact that the evaluator can no longer contact the treating physician for additional medical records, there is no prohibition against the evaluator contacting the parties to augment the medical records. This is the desired course of action for the medical evaluator so that the count of medical records reviewed as part of the evaluation can be accounted for by all parties.  If the evaluator is not receiving relevant and critical medical records, then it is inevitable that the case cannot be resolved without resort to a request for a supplemental medical report. There is incentive against this scenario because the supplemental report incurs additional unnecessary expense on the part of the parties. | None. |
| 11(h)(3) | Commenter notes that he teaches Doctors of Chiropractic: Certification in Workers’ Compensation Evaultion, a 44 hour course and that his organization is the only one approved to provide this training by the DWC Medical Unit.  Commenter notes that “breast cancer” is not included in the AMA Guides, much less the full phrase “industrial breat cancer.” To commenter’s knowledge there is no chapter, category, class, figure, or page number for which impairment could be assigned. Commenter opines that anti-bias language is already included under 11(h)(1) and (2). | James E. Musick, DC, QME, Instructor, International Chiropractors Association of California (ICAC)  December 19, 2023  Written Comment | The Administrative Director disagrees.  The rating for breast cancer is a rating by analogy similar to what the evaluator does when making a rating under Almarez-Guzman. The AMA guides contain rating factors for the effects of breast cancer treatment. The treatment usually involves surgical intervention, chemotherapy, prescription therapies, chronic pain, and scarring caused by radiation treatment or surgery - all of these effects are ratable under the AMA guides. There is an extensive discussion about rating industrial cancers that can be found at the following link:  <https://www.dir.ca.gov/dwc/FAQ/Rating-impairments-Guidance.html>  Specific pages and chapters for the AMA guides are given for these conditions, and there are also examples of rating breast cancer cases. | None. |
| General Comment | Commenter has reviewed the proposed changes and has no comment at this time. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund  January 4, 2024  Written Comment | Noted. | None. |
| § 11.5(j) | Commenter opines that requiring a “live’ or virtual “real time” component of the Disability Evaluation Report Writing course will delay certification for many potential QMEs because of scheduling conflicts with busy physicians who may not be able to sit for 6 hours for a live course.  Commenter states that since COVID required everyone to shift to 100% distance learning, that educationanl providers have recognized the flexibility and the in-depth training provided remotely, with the offer of an optional on-hour QA session for physicians who require or request clarification. Commenter states that the homework sample reports are better than when she was providing live courses and that the pass rate has improved since trainees can rewind, re-watch and study the material at their convenience. | Dana Livinstone-Lopez, TeachCE, Inc.  DWC Training Provider  January 4, 2024  Written Comment | The Administrative Director disagrees.  Any steps taken by the Administrative Director to improve report quality in the QME program could be viewed as burdensome to the existing or prospective QMEs. However any additional burden must be weighed against the possibility of a very much-needed improvement in report quality. By contrast, the steps taken by the Administrative Director could be viewed as an opportunity for the physician to improve their report writing skills.  Requiring an in person component to the report writing course that must be taken upon passing the QME exam ensures that prospective QMEs engage in face-to-face time with the instructor where it is hoped that interaction and discourse will improve the participants understanding of the material. The only data supporting the benefit of in-person instruction is the unassailable fact that colleges and universities have not switched to total online instruction despite the availability of equipment to allow this possibility. In addition, there’s been a documented loss in learning occasioned by children having to participate in classes solely online during the pandemic. These two factors point up the usefulness of in-person instruction.  The administrative director respectfully asserts that if the current 12 hour requirement were sufficient, there would be no need to improve report quality. Therefore, it is only logical to try and expand the educational requirements in an effort to improve report quality.  The possibility that requiring in person instruction will discourage prospective QMEs has not proved to discourage chiropractors from wanting to join the QME program. This is proven to be true even though the existing 44 hour requirement for these physicians also contains an in person hourly requirement. However, these conditions have in no way discouraged chiropractic applicants over the course of the years of the existence of the QME program.  The regulation is currently configured takes advantage of the favorable properties on both distance-learning and in person instruction. The regulation as drafted provides flexibility for the continuing education providers to determine which portions of the required content are provided by the in person instructor as opposed to any distance-learning instruction. | None. |
| § 55(e) | Commenter states that other CE programs (eg CPA) certify education providers once every five years and allow additional courses to be added within that period without recertifying each new course. Annual course evaluations (ICRs) are required and if the returned class evaluations or test scores are not adequate an audit is performed. Commenter opines that the requirement to certify every new course within a 2 year period is burdensome on the provider and on DWC staff. | Dana Livinstone-Lopez, TeachCE, Inc.  DWC Training Provider  January 4, 2024  Written Comment | Noted.  An amendment to regulation § 55(e) is not contemplated by this rulemaking. However, the recommendation is a valid suggestion for future rulemaking.  Unlike other disciplines, Workers’ Compensation is a constantly evolving area of law and practice. Therefore, review and accreditation of continuing education providers every two years seems to be indicated by virtue of the nature of the Workers’ Compensation Law and practice. The two-year period also coincides with the certification period of QMEs. | None. |
| General | Commenter states that DWC is competing with their own certified educational providers by providing free courses on their website and this is disadvantageous to for-profit providers. Commenter opines that eventually the DWC providers will stop offering the report writing course or continuing education for this reason. | Dana Livinstone-Lopez, TeachCE, Inc.  DWC Training Provider  January 4, 2024  Written Comment | Noted. However the comment does not involve this rulemaking.  Traditionally, DWC has only participated in the production of continuing education courses in areas of central importance to the QME practice or where existing continuing education providers have not produced sufficient material. This practice is expected to continue, making any content produced or coproduced by DWC minimal and not a serious competing factor to independent for-profit continuing education providers. | None. |