

Introduction

While the Institute appreciates the division's efforts to streamline the medical legal process and use electronic filing, we suggest a period of beta testing be completed before implementing the on-line QME panel request. Claims administrators have not seen any electronic version of the form and they will require some time to test and implement the form. It is hoped that through testing, users would be able to determine whether a QME Panel had already been issued and/or rejected or if the Panel request was timely.

In the same vein, a grace period for implementation is essential. The parties should have the option to request a panel either in paper or electronic form. A reasonable grace period will allow the workers compensation community and the division the time necessary to perfect the process.

Section 30 -- Unrepresented Cases:

We understand the effort to simplify this form but any reference as to whether the employee had received a prior QME panel and all information related to that examination have been deleted. If an employee has already been evaluated by a PANEL, then the same evaluator should be used if practical. We would recommend that this information be retained on Form 105.

We agree that an electronic request form should also be an option for the unrepresented employee. If the unrepresented employee has indicated a desire to communicate by that method, the use of an electronic form should be available.

Section 30 -- Represented Cases:

The right to revoke a QME panel has been deleted. The Institute believes that it should be retained. Section 30(h) has been deleted but there should be specific reference to the time periods contained in Labor Code sections 4062.1(c) and 4062.2(c), regarding the limits for selecting an evaluator from the QME panel and for scheduling an appointment.

Jason Schmelzer
California Coalition on Workers' Compensation
CalChamber

September 22, 2014

General Comments

We strongly support the DWC's efforts to improve efficiencies with the QME panel request process by advancing to a more streamlined, electronic process with represented injured workers. We would like to suggest that Division consider, with respect to unrepresented workers, the option to request either electronically or by paper. One way that this could be accomplished is to have the injured worker check a box on the DWC-1 form and opt to receive electronic QME notices.

We also anticipate there may be a significant uptick in resolving QME request disputes with the WCAB, which may add delays to the QME panel selection. Rather than place undue administrative burden on the WCAB's resources, we suggest we slow down the potential volume of QME panel request disputes by including a grace period in the regulations similar to the EAMS process by allowing a dual track process until July 1, 2015.

Changes to Section 30 for Unrepresented Cases:

Revisions to the DWC Form 105 removed the section on whether the employee has received a QME panel (before including Panel # and Name of QME seen & Date of Exam) was removed. Quite often, if an employee has already been evaluated by a PQME, we would prefer to utilize the same PQME to be used whenever practical. This would help the injured worker by avoiding the stress of being evaluated by a new PQME and provide a more consistent evaluation. We would recommend that this information remain on the DWC Form 105.

As stated above we would like to suggest an on-line option for the unrepresented employee to request a PQME. Perhaps it could be triggered by a DWC1 election for an electronic option by the unrepresented employee.

Changes to Section 30 for Represented Cases:

We are recommending a grace period to implement the electronic submission process for a year, giving the parties the option to request a PQME either in paper form or by electronic submission. Providing dual options for a year would give the parties & the DWC a test phase to work out any bugs in the on-line system.

The Panel Request Information (QME Form 106) is missing the prior QME examination information along with the Date of Exam. We suggest that the same PQME be used whenever practical for reasons stated above with unrepresented cases. Also this would be consistent with LC Section 4062.1(e) if an employee has received a PQME and he or she later becomes represented by counsel, they would not be entitled to an additional evaluation.

Section 30(c)(2) providing the right to file to revoke a QME panel has been deleted. We would recommend that the right to revoke a QME Panel remain intact.

We note that Section 30(h) has been deleted. We do recommend that there should be some reference to the time periods specified in Labor Code sections 4062.1(c) & 4062.2(c), regarding the time limits for selecting an evaluator from the QME panel and for scheduling an appointment remain in this section.

Changes to Section 31.1 QME Panel Selection Disputes in Represented Cases

Any disputes regarding the validity of the panel QME Selection list or disputes regarding the appropriateness of the specialty designation may be resolved at the WCAB. However, the WCAB will need to be prepared to handle these disputes instead of the Medical Unit.

As stated above, this may pose significant logistic burden to process the administrative type errors during the transition period. We suggest a transition period until July 1, 2015 to lessen the increased dispute resolution process for all parties.

We agree with the change made to the *unrepresented* part of this regulation is the removal of the requirement that the injured worker also issue an objection letter when making a paper QME Form 105 panel request. We support the decision to remove that recently added requirement. Only the examiner in an *unrepresented* case is required to do an objection letter. Historically, the employee objection was rejected for missing attachments and other incomplete information. Simplifying the process for the employee by enclosing a copy of the Denial Notice (when it's a 4060 request), or just submit Form 105 with no attachment at all (if it is a 4061/4062 request) is supported.

Closing Comments

We are recommending a short time period for beta testing be completed prior to the on-line QME panel process going live – such as what was done with EAMS. At the present time, we have not seen any beta version of the on-line QME process to evaluate and test. For example, testing would tell us if a QME Panel had already been issued on a case, if the on-line system would properly make that identification & if the request would then be rejected. In general we strongly support the revisions to these sections.

Bernardo De La Torre, Esq, President
California Applicants' Attorneys Association

September 22, 2014

The California Applicants' Attorneys Association offers the following comments regarding the draft regulations for the "Online QME panel process" which are currently posted on the DWC Forum.

Initially, the proposed changes for unrepresented cases in section 30, subdivision (a), are generally favorable. Unrepresented injured workers no longer are required to provide documentation of a written objection letter to obtain a panel QME. However, if the requesting party is the claims administrator, the claims administrator is required to attach a written objection letter to the new QME Form 105 sent to the Medical Unit, under section 30, subdivision (a), paragraph (2), which is appropriate. CAAA supports this change.

Additionally, the new QME Form 105 for unrepresented injured workers has simple, easy to understand instructions, which should simplify the filing process. It is essential to note, however, that a Spanish version of this form must be made available to comply with Labor Code section 124(b) which states that "Forms and notices required to be given to employees by the division shall be in English and Spanish." CAAA remains concerned that the Spanish version of the Independent Medical Review application is still not available. Therefore, we would like to see a Spanish version of QME Form 105 before these regulations become final.

Generally, CAAA supports an online panel QME filing process for represented cases. We believe this will expedite receipt of panel QME lists which will result in cases moving more quickly to a final resolution. This should also prove less costly for the employer and insurance carrier if the current QME delays are minimized or eliminated.

However, we do recommend that section 30, subdivision (b), paragraph (3) be revised to not require service of “supporting documentation” on the opposing party, if it has previously been served. If the online QME eForm 106 references the supporting documentation filed, this should be sufficient. Therefore, we suggest that the language “but not previously served” be added after “...supporting documentation that was submitted online...” in paragraph (3).

Also from a technical standpoint, it would be helpful and more efficient if the online QME eForm 106, was set up to auto populate information for the case from EAMS, or in the alternative allow a scanned version of the form to be submitted electronically from information in the applicants’ attorney’s or claims administrator’s database. This will save valuable time for both the claims administrator and applicants’ attorney, who otherwise would have to type in case and address information on every submission.

Finally, CAAA supports the addition of Section 31.1, new subdivision (a), to these regulations. Allowing for any disputes regarding the validity of the panel QME selection list or appropriateness of the specialty designation to be resolved at the WCAB will further the goal of eliminating or minimizing delays in the QME panel process. This will also insure that the administrative burden of reviewing these disputes will not be placed on the Medical Unit.

Peggy Thill, Operations Manager
State Compensation Insurance Fund

September 22, 2014

State Compensation Insurance Fund appreciates the time and effort the Division of Workers’ Compensation (DWC) has put into revising the regulations for online QME panel process and QME Form 105. The following comments are submitted for your consideration.

§30. QME Panel Requests

Discussion

- 1) The revised regulations regarding initial panel requests on represented cases, 8 CCR § 30 (b), indicate that such requests shall only be submitted electronically on a future DWC intranet site. The DWC has removed the language throughout § 30 allowing for mailing of an initial QME panel request for represented cases and replaced it with

language referring to an online request portal that has not yet been created nor demonstrated to the public. There is no detail provided regarding the future online system and no information regarding safeguards and oversight that will be built into the system.

Additionally, the revisions are not consistent with the Labor Code. LC § 4062.2 (b) provides that on represented cases a QME may be requested 10 days after mailing of an objection pursuant to LC § 4061 or 4062 or 10 days after the date of mailing a request for evaluation pursuant to LC § 4060. The section also refers to a “request form” to be used for requesting a QME panel. There is nothing in the Labor Code that mandates that requests be made online; in fact, the Labor Code alludes to requests submitted by mail.

- 2) Additionally, while § 30 (b) (1) lists the information that will be required to submit the online request, it does not contain all of the information contained on the current QME Form 106. The field for the opposing party’s specialty preference (if known) is not included. LC § 4062.2 (b) states that “The party submitting the request shall designate ... the specialty of the medical evaluator requested by the other party if it has been made known to the party submitting the request...” In addition, the field on the current QME Form 106 for information regarding the defendant’s attorney is also not listed. While some claims administrators have in house defense attorneys, not all do; allowing only applicant attorneys to submit a request online for represented cases gives them an unfair advantage over defense counsel.
- 3) Revised § 30 (b) (2) indicates that parties must upload and scan in the supporting documentation for submitting a panel request. However, there is no timeframe included in this section or elsewhere in the regulations allowing employers and claims administrators time to update systems and train staff on how to scan and upload documents.
- 4) The proposed revised § 30 (b) (3) mandates that a paper copy of the online form with proof of online submission be served within one working day of generating the panel list. However, the DWC has not specified that the online system will automatically generate a panel QME list. Additionally, there is nothing in the regulations regarding potential repercussions for parties that do not comply with the section. Furthermore, there is no process for parties to object to the submission of a panel QME request.
- 5) The DWC has completely removed § 30 (c)(1) which previously allowed the Medical Director to determine whether a request was incomplete or improperly completed and also allowed the Director to delay issuing a new QME panel for receipt of additional information from the parties. Completely removing this process may result in an increase of improper / incomplete panel requests. Since § 30 (b) (3) is also silent regarding oversight of the request process, there is likely to be an increase in disputes over panel QME requests.

Recommendations

- 1) State Fund recommends that the DWC first demonstrate its proposed online website referred to in 8 CCR § 30 before imposing regulations that do away with the current process of mailing panel QME requests on represented cases. In creating such a website, the DWC will need to consider system measures to ensure privacy of information and routine maintenance of the website. Additionally, the DWC should have a test period for the public to ensure that the electronic system operates as intended for the user (employers, claims administrators and attorneys).

Given that there is no requirement in the Labor Code for submitting requests only online, State Fund also recommends that the DWC allow for a transition period of at least one year from the date of approval of regulations from paper mailing to online submission of panel QME requests for represented cases. During this transition period, panel QME requests should be accepted both by mail and online. A transition period would allow employers and claims administrators to update their claims processes but more importantly, it would allow the industry ample time to report issues with the website and the DWC time to resolve problems with the online system.

- 2) The use of the word “shall”, as described in LC § 15, is mandatory. Therefore, to comply with LC § 4062.2 (b), the DWC should include in 8 CCR § 30 (b) (1) information for the opposing party’s specialty preference (if known). Additionally, in order to maintain impartiality, the information for defense attorney should also be preserved on the online system.
- 3) Along the lines of what State Fund has recommended in 1), employers and claims administrators should have ample time to transition to the new system in order to properly update procedures, software for scanning and uploading and for training staff on the new online process. Undue hardship will be placed upon employers and claims administrators to comply with the new process if they are not given time for training staff and updating systems.
- 4) State Fund recommends that the DWC clarify how and when the Panel QME list will be generated. State Fund also recommends that the DWC specify the ramifications for parties who do not comply with § 30 (b) and what recourse parties will have when there is an objection to the QME panel request.
- 5) State Fund recommends that the DWC clarify in the regulations which provisions will be put into place to ensure that requests for panel QME are made appropriately. If this is not specified, it will likely lead to increased disputes at the Workers’ Compensation Appeals Board (WCAB).

§31.1. QME Panel Selection Disputes in Represented Cases

Discussion

The proposed regulations remove the right and responsibility of the Medical Director to determine which panel request will be fulfilled when more than one form is received on the same day (§ 31.1 (a)). Additionally, the responsibility of the party to submit documentation to support a QME request in a specialty different from the treating physician's specialty is eliminated (§ 31.1(b)). Finally, the DWC has added language that any disputes relating to the panel QME must be resolved at the WCAB.

Shifting the responsibility of the Medical Director to the WCAB is likely to cause an increase in litigation at the board that has previously not manifested in court since the Medical Director maintained oversight over the process. Adding another layer at the WCAB is likely to produce more delays in hearing and resolving disputes. Since reform legislation did not impose such changes and the DWC did not issue an Initial Statement of Reasons with this round of changes to the QME regulations, it is unknown why the DWC has decided to shift these responsibilities to the WCAB.

Recommendation

State Fund recommends that the DWC clarify why the shift in responsibilities is being made. Moreover, the DWC should consider keeping at least § 31.1 (a) and § 31.1 (b) in place so that technical disputes remain under the purview of the Medical Director. It is reasonable for the DWC to shift handling of QME disputes of large scope to the WCAB but it is unreasonable to shift all resolution of disputes to the WCAB.

§31.5. QME Replacement Requests

Discussion

The DWC has removed the definition of “good cause” in § 31.5 (a) (9) and its definition is not contained in § 1. If “good cause” is left undefined it may cause confusion and lead to further disputes at the WCAB.

Recommendation

State Fund recommends that the DWC define “good cause” in this section or elsewhere in the QME regulations.

QME Form 105 – Request for QME panel under Labor Code Section 4062.1 - Unrepresented

Discussion

Overall, the changes to the QME Form 105 for unrepresented employees provide clarity for the injured employee seeking to request a QME panel. However, there is no indication in the form or in the proposed regulations as to when this form will be effective.

Recommendation

State Fund recommends that the DWC indicate the effective date of the revised QME Form 105 in the regulations; § 30 (a) which describes the process for unrepresented injured employees is perhaps the best place to indicate the effective date of the revised QME Form 105. Additionally, given the multiple changes to the form, State Fund recommends the DWC allow a grace period of 120 days or more from the date that the revised form is approved and filed with the Secretary of State. Doing so will allow employers and claims administrators enough time to update electronic systems and claims procedures to include the revised QME Form 105 and ensure compliance in sending required letters and forms to the injured employee.

Jacquelyn S. Sherlin

September 17, 2014

This email is a comment on the proposed changes to Sections 30 et seq of Title 8 CCR.

First, I wish to state how thrilled I am that requesting a QME panel will now be made available online. That way, the DWC is relieved of all the time consuming input, it can be done by the attorneys or claims reps, and panels can be obtained so much more quickly.

My first comments comes under Section 30(b)1). There is a small error in the title which states "Employee and Claims Administrator Information Section." That appears to be a typo and should read "Employer and Claims Administrator Information Section." The more significant error in that section is no provision has been made for a defense attorney information section. On litigated cases, defense attorneys are usually the ones making the request. Therefore, that omitted section is quite important and should be added.

Under Section 30(b)1) there should be an electronic entry of the name and at least city for location of the primary treating physician. Additionally, another section should allow input for the list of all physicians who have treated or examined the injured worker for that injury in order to avoid a panel being issued with a QME who has been either the primary treating physician or secondary treating physician. Including that list for the checking initially would eliminate the potential for having to request a replacement panel as set forth in Section 31.5(a)(7). These physicians entry should also that the town in which they are practicing in order for the computer to run a simple check and eliminate scan to issue the three QMEs.

Thank you for this great effort.

Liza Logan

September 14, 2014

Please, please visit and address the topic of e-signatures on Med-Legal documents/reports, etc. With so many providers utilizing EMR and e-signatures, it is very inconvenient and costly to re-arrange the work flow to accommodate a wet signature. Even more, when you think about it the QME appointment notification form original is served upon the injured worker (does the original signature really matter here?). Another point, the original signature on the QME/AME reports go to which party? The insurance companies now scan all of their mail, many law offices and any provider utilizing EMR scans their mail.

The only way for medical providers to keep up with the demands of the increased paperwork and less reimbursement is to have an EMR to reduce the redundant and repetitive tasks. Please help the providers by accepting E-signatures. Thank you.
