

July 9, 2020

The California Applicants' Attorneys Association ("CAAA") offers the following comments regarding the proposed revisions to the Medical Legal Fee Schedule which are currently posted on the DWC Forum.

Initially, CAAA thanks the DWC for its' continued efforts at revising the med-legal fee schedule after receiving feedback at a series of stakeholder meetings beginning in the Fall of 2019, and extending through the end of January 2020.

These meetings occurred after two unsuccessful prior proposals to revise the med legal fee schedule were posted on the DWC Forum in May 2018, and August 2019, resulting in an outcry of opposition, and requiring the DWC to go back to the drawing board.

Simply put an update of this schedule is long overdue (last updated in 2006).

However, despite making progress, problems persist in this current proposal posted on the DWC Forum, and therefore, this should not be considered the final step in the process.

With the ongoing attrition in the number of QMEs remaining in the system willing to evaluate injured workers there is an extraordinary lack of focus from the DWC about how complex evaluations require sophisticated, knowledgeable, experienced, evaluators who are paid properly for the work they do.

The DWC complains about poor quality reporting (which is an issue) but fails to have any plan to reward evaluators for doing extraordinary complex work in a timely and thorough fashion. Instead they are prioritizing the "bottom line" for the payors for the most basic medical legal evaluations.

All parties will be negatively impacted by an inadequate fee schedule, although injured workers the most.

Adequate QME/AME compensation is critical to the ability to obtain substantial medical evidence required to prove a claim.

With these issues in mind, the following are our general comments about some of the more problematic proposed revisions presented on the current DWC Forum.

ML 202 provides for payment for a follow up evaluation in the amount of \$1316.25 if it occurs within 24 months after the initial evaluation. The current fee schedule defines a follow up evaluation as occurring within 9 months and there is no reason this time period for a follow up evaluation should not continue to be appropriate. 24 months is too long for an evaluation to be considered a “follow up”. A lot can happen in an injured workers’ case including a significant change in their medical condition and diagnosis in 24 months. This proposal would preclude adequately addressing these changes in an injured workers condition over time due to this lower payment.

ML 206 provides for no payment for a “Remedial” supplemental med legal evaluation. Specifically “This code shall be used for supplemental reports following the physician's review of: (1) information which was available in the physician's office for review or was included in the document record provided to the physician prior to preparing a comprehensive medical-legal report or a follow-up medical-legal report, (2) addressing an issue that was requested by a party to the action to be addressed in a prior comprehensive medical-legal evaluation, a prior follow-up medical-legal evaluation or a prior supplemental medical-legal evaluation, or (3) addressing an issue that should have been addressed in a prior comprehensive medical-legal evaluation, a prior follow-up medical-legal evaluation or a prior supplemental medical-legal evaluation pursuant to the requirements for a medical-legal evaluation and or report as required by any provision of title eight, California Code of Regulations, sections 9793, 9794 and 9795.” The terms in this new section are extremely vague, difficult to measure, and may be prone to abuse by carriers, who will be allowed to deny payment under this section, without any oversight or semblance of neutrality. Circumstances under which a reduced payment is owed for a supplemental medical legal evaluation should be more narrowly defined and the reduction in payment should only be due for repeat violations by a QME that can be independently documented, not simply determined by the carrier.

ML 201 through 203 modifiers should include record review. It does not seem logical to exempt record review from the AME modifier. It’s usually what’s in those records and gaining a good understanding of them that takes time and makes such a case so difficult and complex to evaluate.

Per page fee should not decrease with increasing page count. This decreases the incentive for a QME to thoroughly review all records and address all questions for a quality report.

Because of the complexity of a psychiatric, toxicology, or oncology evaluation, modifiers –96, -97, -98 should be at a higher level, such as 2x or 3 x, as discussed at the stakeholder meetings.

Lastly, a Cost of Living Adjustment (“COLA”) is needed in these regulations.

The State Auditor’s report expressly recommended a COLA, but this has been ignored by the DWC .

” To ensure that the DWC maintains a sufficient supply of QMEs and appropriately compensates these individuals, the Legislature should amend state law to specify that the DWC review and, if necessary, update the medical-legal fee schedule at least every two years based on inflation. “ -State Auditor(11/2019)

Rather than waiting for the long process of legislation, particularly in these COVID 19 times, a COLA modifier should be built into these regulations, which can easily be linked to the Consumer Price Index for inflation.