

CHANGES TO THE MEDICAL-LEGAL FEE SCHEDULE – IT'S AN ENTIRELY NEW FEE SCHEDULE



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May 20, 2021

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Medical-Legal Fee Schedule History

- May 18, 2018 **DWC posts proposed changes to the Medical-Legal fee schedule to clarify interpretation. Over 500 negative responses received from QME community**
- October 17, 2018 **Public forum held for all QME stakeholders to ascertain what the entire community wanted to see in a new Medical-Legal Fee Schedule.**
- December 12, 2018 **DWC posts invitation for written proposals from QME stakeholder community with models for a new Medical-Legal Fee Schedule. Over 30 proposals received from stakeholders.**
- May 21, 2019
June 11, 2019 **Small stakeholder meetings held with QME advocates and employers/carriers separately to review proposals.**
- August 6, 2019 **Draft for new Medical-Legal Fee Schedule consisting of a synthesis of the proposals received by the DWC is posted to the forum. (Forum closed August 23.)**

Medical-Legal Fee Schedule History

June 25, 2020	Revised proposal for fee schedule posted on DWC website forum. DWC moves to predominantly fixed fees
October 28, 2020	DWC issues notice of public hearing on fee schedule.
December 14, 2020	Virtual public hearing on the proposed fee schedule regulations via Zoom.
February 25, 2021	DWC submits final rulemaking documents to the Office of Administrative Law for approval.
March 30, 2021	Proposed regulations approved by the Office of the Administrative Law and filed with the Secretary of State.



New Medical-Legal Fee Schedule

- Effective Date: April 1, 2021 (8 C.C.R. section 9795(f))
 - Physical Examination or Testimony that occurs on or After April 1, 2021
 - Not the date the report is issued
 - Supplemental medical-legal reports (no examination) where the request is on or after April 1, 2021

Summary of Changes

- Replaced Time-based Billing Codes For ML101, ML104, And ML106 With Flat Fees.
- Eliminated Complexity Factors.
- Flat Fee Applied To Evaluations Involving Less Than 200 Pages Of Records Review.
- Established A Page-based Reimbursement For Document Review \$3.00pp once above minimum.
- Increased The Reimbursement Rates For Medical-Legal Testimony And For Reports Involving Psychiatric, Toxicology and Oncology.
- Created New Declaration Requirements (Documents sent/received & Meet and Confer)
- Standardized The Payment Owed For A Missed Appointment.

Basic Fees

- Comprehensive Medical-Legal Evaluation: \$2015.00 plus \$3 pp after 200 pages (ML201)
 - Initial evaluation and follow-up evaluations that occur more than 18 months since last evaluation
 - You can bill this again 18 months and 1 day from last ML201
- Follow-up Medical-Legal Evaluation: \$1316.25 plus \$3 pp after 200 pages (ML202)
 - An evaluation that occurs within 18 months of a prior comprehensive evaluation
 - Review of records previously reviewed are excluded from reimbursement
- Supplemental Medical-Legal Evaluation: \$650.00 plus \$3 pp after 50 pages (ML203)
- Deposition \$455.00 per hour (ML204)
 - Minimum of two hours

Supplemental Report is Not Billable When:

1. The records reviewed were available to the physician at the time of the prior comprehensive medical-legal evaluation (either initial or follow-up).
 - a) Available if previously provided to medical-legal evaluator, and
 - b) Included in the page count for the prior declaration page.
2. The supplemental report addresses an issue that a party previously requested that the medical-legal evaluator address.
3. If the medical-legal evaluator fails to submit a supplemental report because the evaluator cannot bill, that action is subject to discipline under the terms of section 9795(c).

Other Fees

- Missed Appointment \$503.75 (ML200)
 - Can bill for a record review report if records are received and reviewed in connection with a missed appointment
- Sub Rosa: \$325.00 per hour plus report associated with the review (ML205)
- Modifiers:
 - Apply only to the Comprehensive Medical-Legal Evaluation; Follow-up Medical-Legal Evaluation and Supplemental Medical-Legal Evaluation
 - Apply only to the base fee not to the pp fee.

Modifiers

- AME (1.35) and Interpreter (1.1) Modifier are still available.
 - Note - AME modifier does not apply to everything - Limited to ML 201-203.
 - AME and Interpreter combined 1.45
- Modifier 92 PTP: Informational purposes only – no increase
 - This does not mean that a PTP can provide a medical legal report.
- Modifier 96: Is for examination by Psychiatrist or Psychologist
 - Modifier 2; Interpreter 2.10; AME 2.35; Interpreter and AME 2.45

Modifiers

- **Modifier 97 Toxicology Evaluation**

- Performed by a physician who is board certified in Toxicology, a physician who is certified as a Qualified Medical Evaluator in the specialty of Internal Medicine or a physician who is board certified in Internal Medicine, when a Toxicology evaluation is the primary focus of the medical-legal evaluation.
- Modifier 1.5; Interpreter 1.6; AME 1.85, Interpreter and AME 1.95

- **Modifier 98 Oncology**

- Board certified in Medical Oncology, QME in specialty of Internal Medicine or a physician who is board certified in Internal Medicine, when an Oncology evaluation is the primary focus of the medical-legal evaluation
- Modifier 1.5; Interpreter 1.6; AME 1.85, Interpreter and AME 1.95

Record Attestation or Declaration

- 9793 (n): Any documents sent to the physician for record review must be accompanied by a declaration under penalty of perjury that the provider of the documents has complied with the provisions of Labor Code section 4062.3 before providing the documents to the physician. The declaration must also contain an attestation as to the total page count of the documents provided.
- **If no declaration then records are considered not received and will not be reviewed by the physician.**
- Physician is also required to do a declaration as to number of pages reviewed for report.
- All signatures are under penalty of perjury.

What is a Record/Page?

- Does the physician need to review it and consider it for the reporting?
 - A record is 8 ½ by 11 single sided document, chart or paper in either physical or electronic form.
 - Multiple condensed pages on a single page are billed as multiple pages (condensed deposition transcript).
- Cover letters
- Medical records, deposition transcripts, medical test results, and or other relevant documents.
- What is likely not a page:
 - Fax cover sheets
 - Proof of service
 - Divider sheets
- Questionable:
 - Duplicate medical records (likely billable as pages)

Labor Code section 4062.3: Meet & Confer Meeting of the minds on records

(a) Any party may provide to the qualified medical evaluator selected from a panel any of the following information:

- (1) Records prepared or maintained by the employee's treating physician or physicians.
- (2) Medical and nonmedical records relevant to determination of the medical issue.

Essential Elements of Section 4603.2

- Party must serve information that it intends to send to a medical-legal evaluator to the opposing party 20 days before the information is provided to the evaluator.
- Opposing party has 10-days to object to non-medical records.
- If a party objects, then it shall not be provided to the evaluator.
- Either party may seek board jurisdiction to address the accuracy or authenticity of the non medical evidence.
- Like all other interactions between parties, objections subject to good faith requirements.

Section 9794: Reimbursement Of Medical-Legal Expenses

- Diagnostic testing: must follow OMFS, not reimbursable unless subjective complaints and physical findings warrant testing. Not reimbursable if adequate medical information to address the issue was already provided to the physician.
- Contains timelines and basis for objections, explanations of benefits, requests for second review and procedures up to IBR and non-IBR procedures
- 60-days to pay from report and billing receipt unless disputed within that timeframe
- Must pay uncontested portion of medical-legal expense within 60-days.
- Claims/defendant must explain reasons for objection, including applicable regulation sections, through explanation of review.
- If medical-legal evaluator disputes a mark down, that evaluator must request the claims administrator to conduct a second bill review under section 9792.5.5.

Extraordinary Circumstances - Labor Code section 5307.6

- (b): provider shall not charge in excess of the fee schedule unless
 - Provides itemization and explanation of the fee
 - Showing that the fee is reasonable and that extraordinary circumstances related to the **medical condition** justify a higher fee.
- Employer and employee have standing to contest fees in excess of fee schedule.
- Note if there is a fee dispute and doctor's deposition or testimony is needed the physician if prevails is entitled to a fee for this time.

Additional Regulations – DWC Forum

DWC Website Forum posting from April 29 – May 14, 2021

Proposed Regulations include:

- Provisions for electronic service of medical-legal reports and use of electronic signatures in the QME program.
- Revision of the number of hours necessary for initial qualification of physicians as QMEs (16 hours in disability evaluation report writing; including 2 hours in anti-bias training and 2 hours of case law review).
- Revision of continuing education requirements including hourly requirements and the addition of anti-bias training for QMEs (16 hours of continuing education, including anti-bias training).

Additional Regulations – DWC Forum

Clarification of the use of probation as a disciplinary sanction and allowing the Administrative Director to designate hearing officers for adjudication of disputes regarding appointment and reappointment applications.

- Listing of specific grounds for denial of reappointment.

Report Quality – Committee Review

- Committees of judges, lawyers, physicians, and retired judges to review and comment on the quality of medical-legal reports.
- The reports selected for review come randomly from the EAMS and from investigation files of the QME Discipline Unit.
- The members of each individual committee review 8-15 reports.
- Use of checklist to ensure reports constitute substantial medical evidence and addresses all required elements.

Report Quality – Committee Review

- Used in report to Executive Medical Director and Administrative Director.
- Purpose:
 - Ensure overall quality of medical-legal reports being utilized in the CA workers' compensation system
 - Identifying quality issues in medical-legal reports and compliance with state regulations
 - Recognizing current state laws, trends, legal/medical practices
 - To help improve the QME system by providing recommendations developed by reviewers on this committee