

Date of Hearing: April 23, 2025

ASSEMBLY COMMITTEE ON INSURANCE

Lisa Calderon, Chair

AB 1293 (Wallis) – As Amended April 9, 2025

SUBJECT: Workers' compensation: qualified medical evaluators

SUMMARY: Requires the administrative director (AD) of the Division of Workers' Compensation (DWC) to develop and make available a template qualified medical evaluator (QME) report form and a medical evaluation request form for parties to communicate with a panel QME, and requires the AD to, by January 1, 2027, promulgate regulations to implement those measures and to effectively review the quality of medical-legal reports. Specifically, **this bill:**

- 1) Requires the AD to develop and make available a template QME report form, including all necessary statutory and regulatory requirements for a complete report that constitutes substantial evidence.
- 2) Clarifies that the use of the template QME form does not constitute prima facie evidence that the report is complete, accurate, or compliant with applicable statutory or regulatory requirements.
- 3) Requires the AD to develop and make available a medical evaluation request form for communicating with a panel QME in advance of a medical-legal evaluation, in accordance with specifications detailed in existing law.
- 4) Requires DWC, in accordance with the Administrative Procedure Act, to adopt regulations to implement these requirements with an effective date no later than January 1, 2027.
- 5) Requires the AD to, by January 1, 2027, promulgate regulations to do all of the following:
 - a) Establish a process by which a party to a workers' compensation dispute may submit a medical-legal report that is alleged to be inaccurate or incomplete to the medical director;
 - b) Annually evaluate medical-legal reports, including all medical-legal reports submitted in accordance with that report submission process and all medical-legal reports rejected and noticed in accordance with existing law; and
 - c) Publish the annual report required under existing law which reviews the quality and timeliness of comprehensive medical evaluations and reports prepared by qualified medical evaluators on DWC's internet website.

EXISTING LAW:

- 1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of, employment, irrespective of fault. (California Constitution Article XIV, Section 4)

- 2) Provides for a formal system of administrative dispute resolution for cases where an injured worker and their employer do not agree over any issue associated with the delivery of workers' compensation benefits, including evaluation by a neutral QME, receipt of a medical-legal report prepared by the QME based on that evaluation and any other medical records and information provided by the parties, the opportunity to meet before a workers' compensation administrative law judge (WCJ) for adjudication on the dispute based on the medical-legal report, and, if necessary, appeal the WCJ's decision to the Workers' Compensation Appeals Board (WCAB) for final judgement. (Labor (Lab.) Code Sections 4060, et seq.)
- 3) Tasks the AD with appointing QMEs, for two-year terms, in each of the respective specialties required for the evaluation of medical-legal issues, and requires that a QME be a physician licensed to practice in California, spend at least one-third of their time providing direct medical treatment, report specified financial interests, take at least one 12-hour course on writing medical-legal reports, pass a competency exam, and pay an annual fee. (Lab. Code Section 139.2)
- 4) Prescribes specific procedures and timelines for QME selection and evaluation for injured workers that are and are not represented by an attorney. (Lab. Code Section 4061, 4062.1, and 4062.2)
- 5) Prescribes specific procedures and timelines for parties to provide information to the QME regarding records prepared or maintained by the employee's treating physician(s) and/or medical and nonmedical records relevant to determination of the medical issue; requires that any communication with the QME be in writing and served upon the opposing party 20 days in advance of the evaluation; and prohibits ex parte communication with a QME by either party. (Lab. Code Section 4062.3(a)-(i))
- 6) Requires that, upon completing a determination of the disputed medical issue, the QME summarize the medical findings on a form prescribed by the AD and serve the formal medical evaluation and the summary form on the employee and employer; and requires that the medical evaluation address all contested medical issues arising from all injuries reported on claim forms prior to the employee's initial appointment with the QME. (Lab. Code Section 4062.3(j)).
- 7) Requires that the medical director of DWC continuously review the quality of comprehensive medical evaluations and reports prepared by QMEs and the timeliness with which evaluation reports are prepared and submitted. (Lab. Code Section 139.2(i))
- 8) Requires that, if a WCJ or WCAB rejects a QME's report on the basis that it fails to meet the minimum standards for those reports, the WCJ or WCAB make a specific finding to that effect and give notice to the QME and to the AD. (Lab. Code Section 139.2(d)(2))

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) *Purpose:* According to the author, "We need to fix a workers' compensation system that's too slow for those who rely on it. The 2019 Auditor's review found 85% of Panel QME reports from 2015-2016 weren't adequate, dragging out disputes and hurting employers and

employees alike. This bill pushes the DWC to ensure better report quality and provides templates for clarity – because no one should endure endless delays.”

This bill is sponsored by the California Coalition on Workers’ Compensation (CCWC).

- 2) *Workers’ compensation and the QME process:* At its core, the workers’ compensation system relies on a so-called “grand bargain.” If a worker is injured on the job, the employer must pay for the worker’s medical treatment, including monetary benefits if the injury is permanent. In exchange for receiving the guarantee of such treatment, the worker surrenders the right to sue the employer for monetary damages in civil court. To receive such care and/or benefits, the worker must be able to demonstrate that it is more likely than not that the injury arose “out of and in the course of employment.” According to recent research by the California Workers’ Compensation Institute (CWCI) and RAND, more than 90% of all workers’ compensation claims and requests for medical treatment are approved.

If a dispute arises between the injured worker and the employer over whether an injury is work-related, a worker’s capacity to return to work, the existence or extent of a permanent disability, the ability to engage in the worker’s usual occupation, or the need for specific or future medical treatment, the injured worker may request a QME. QMEs – qualified medical evaluators – are licensed physicians that must: spend at least one-third of their time providing direct medical treatment; report specified financial interests, take at least one 12-hour course on writing medical-legal reports, pass a competency exam, and pay an annual fee.

When a QME is requested, DWC uses a computer program to randomly generate a “panel,” i.e. a list of three QMEs, based on the requested medical specialty and the proximity to the worker’s residence. Depending on whether the injured worker is represented by an attorney, the QME selection process differs. If unrepresented, the injured worker selects a QME from the panel and makes an appointment within 10 days. If represented, the injured worker and the employer each eliminate one QME from the panel, and the injured worker makes an appointment with the remaining QME within 10 days. At this point, the QME reviews medical records and evaluates the injured worker, and, within 30 days of the evaluation, writes and distributes to the parties a “medical-legal report,” which addresses the issues of the dispute and includes findings by the QME that a WCJ may need to resolve the dispute. The parties may then use the findings detailed in the report to resolve the dispute directly, or may meet before a WCJ to render a judgement resolving the dispute.

The efficient function of this process is critical, as obstacles or delays in resolving a dispute can delay injured workers essential care and compensation, and can be extremely costly to employers. Numerous reports have identified two major inefficiencies in this system that appear to underlie the majority of issues in reaching dispute resolution through the QME process: 1) unavailability of the selected QME within 60 days of selection, due largely to a documented QME shortage, that necessitates a request for a replacement panel or QME after those 60 days have elapsed, and; 2) inaccurate or incomplete medical-legal reports that do not provide sufficient evidence for a WCJ to render a judgement, prolonging the process while the QME is deposed or supplemental evaluation and reporting is conducted to resolve the missing or inaccurate information. This bill seeks to address the latter.

CCWC, who sponsor this bill, along with a coalition of supporters representing business interests, counties, and managed care organizations explain:

In 2022 the state received 192,600 requests for QME Panels and assigned 141,239 Panels. These are not minor disputes being resolved – these reports determine whether temporary disability continues, whether a requested medical treatment is appropriate, or how much permanent impairment a worker has suffered from the injury.

Unfortunately, the Panel QME reports are frequently inadequate for the purpose of resolving disputes in the system. Resolution of disputes is frequently delayed so a supplemental report can be prepared or so the parties can depose the Panel QME. These delays harm injured workers and increase costs for employers. AB 1293 seeks to improve the quality of Panel QME reports with the aim of resolving disputes faster.

- 3) *State Auditor's November 2019 report – deficiencies in QME reporting and review:* At the request of the Joint Legislative Audit Committee, in 2019, the California State Auditor conducted an audit of DWC's oversight and regulation of QMEs. The audit identified several insufficiencies in DWC's administration of the QME process. The report detailed these findings, opening with a letter from the State Auditor that read, in part, as follows:

As directed by the Joint Legislative Audit Committee, my office conducted an audit of the Department of Industrial Relations' Division of Workers' Compensation (DWC) and its oversight and regulation of qualified medical evaluators (QME). This report concludes that DWC's failure to adequately oversee QMEs and administer the process for selecting them to examine workers may delay injured workers' access to benefits. DWC has not ensured that it has enough QMEs to meet demand, that it follows the department's regulations to discipline certain QMEs, and that QMEs produce high-quality reports.

This lapse in oversight concerning the quality of QME reports is detailed at length in the report. While Section 139.2(i) of the Labor Code requires the medical director of DWC to "continuously review the quality of comprehensive medical evaluations and reports prepared by agreed and qualified medical evaluators and the timeliness with which evaluation reports are prepared and submitted," the Auditor's report suggests that DWC has not complied with this law. According to the report, "other than one effort in 2015, the executive medical director could neither provide the required annual reports nor demonstrate that DWC has continuously performed a review of report quality since 2007." Startlingly, that 2015 effort revealed that 85% of the reports reviewed were found to be "substandard in one or more ways." DWC also failed to report on the timeliness of QME reports, but did compile data on complaints of late reports. These data for 2017 and 2018 revealed that late reports were the most common reason for complaints against QMEs.

Similarly, the Auditor's report suggest that DWC has not complied with Section 139.2(d)(2) of the Labor Code, which requires a WCJ or the WCAB to make a specific finding and give notice to the QME and the AD if a medical-legal report is rejected on the basis that it fails to meet the minimum standards established by the AD or WCAB. According to the report:

Although DWC's chief judge could not provide us with documentation for how many reports the presiding judges in her jurisdiction had rejected, she polled her presiding judges to provide this information. Based on the poll, DWC's chief judge told us that workers' compensation judges rejected about 70 QME reports over the last year alone because they did not provide substantial medical evidence. However, DWC could only provide us with one report rejected by a workers' compensation judge or the Appeals

Board within the last five years. [...] In part because DWC has not complied with these state laws, it lacks data regarding the quality of QME reports and whether this is a systemic problem.

The report did note, however, that the compliance manager of DWC's medical unit informed the Auditor that DWC assigned staff to begin tracking reports rejected by WCJs or WCAB in May 2019, which was after the audit was already underway.

- 4) *Auditor's recommendations and this bill:* To resolve the identified issues, the Auditor recommended that DWC take the following actions:
- Create and implement a plan to continuously review the quality and timeliness of QME reports, including time frames for review, methodology for selecting reports to review, and the minimum number of reports to be reviewed annually;
 - Develop and implement a process for annually reporting to the AD its findings on the quality and timeliness of QME reports and recommended improvements to the QME system;
 - Create written policies and implement a consistent process for ensuring that WCJs and WCAB inform DWC of QME reports they rejected for not meeting minimum standards; and
 - Create written policies and implement a process for tracking QME reports rejected by WCJs and WCAB for not meeting minimum standards, and consider and include these reports in its annual review of report quality and recommended improvements to the QME system.

Though the Auditor's report recommended taking these actions by April 2020, this bill seeks to bolster these efforts. Specifically, the bill would require the AD to promulgate regulations by January 1, 2027 that: create processes for parties to a case to submit medical-legal reports that are alleged to be inaccurate or incomplete; clarify that, at a minimum, the annual evaluation of medical-legal reports include all reports submitted through that process and those that were rejected by WCJs or WCAB; and require that the report be published on the DWC website to improve transparency and accountability.

Section 4062.3(j) of the Labor Code presently requires that the AD prescribe a form for QMEs to summarize their medical findings for the parties to the dispute, but does not require prescription of such a form for the full medical-legal report. This bill also seeks to improve the quality of QME reports directly by requiring the AD to develop a template QME report form that includes all necessary statutory and regulatory requirements for a complete report that constitutes substantial evidence. This should in theory reduce the number of incomplete reports by clearly defining the types of information that must be included. The bill clarifies, however, that use of the template alone is not sufficient to establish a report as substantial evidence that is complete, accurate, and compliant with existing law. Finally, the bill seeks to streamline the QME process by requiring the AD to develop a medical evaluation request form designed to facilitate communication of relevant information with a QME to produce a substantive report.

- 5) *Pending and prior legislation:*

AB 1329 (Ortega, 2025) would, among other things, require that medical-legal evidence regarding claims for special compensation from the Subsequent Injuries Benefit Trust Fund be evaluated through the existing QME process. This bill is currently awaiting hearing in the Assembly Insurance Committee.

SB 668 (Hurtado, 2025) would authorize the AD to adjust the fee schedule for medical-legal evaluations every two years based on an evaluation of medical practice costs. This bill is currently awaiting hearing in the Senate Committee on Labor, Public Employment, & Retirement.

AB 1815 (Daly & Salas, 2020) would have required the AD to adopt and revise the medical-legal fee schedule for QMEs at least every two years independently from adopting and revising the medical treatment fee schedule. This bill died in the Senate Committee on Labor, Public Employment, & Retirement.

AB 1832 (Salas, 2019) would have updated the medical-legal fee schedule for QMEs by a minimum conversion factor of at least \$18.75. This bill died in the Assembly Insurance Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Acclamation Insurance Management Services
Agile Occupational Medicine
Allied Managed Care
Association of California Healthcare Districts
California Alliance of Self-insured Groups
California Association of Joint Powers Authorities (CAJPA)
California Attractions and Parks Association
California Chamber of Commerce
California Coalition on Workers Compensation
California Joint Powers Insurance Authority
California League of Food Producers
California Restaurant Association
California State Association of Counties
Coalition of Small and Disabled Veteran Businesses
Flasher Barricade Association
Keenan
Rural County Representatives of California
Rural County Representatives of California (RCRC)
Self-insured Schools of California
The Greater Coachella Valley Chamber of Commerce
Urban Counties of California (UCC)

Opposition

None on file.

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