

AWARD WINNING
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Representatives for a group of 100 plus qualified medical evaluators and a handful of QME management companies dropped plans to go to court after the Division of Workers' Compensation issued an emergency measure authorizing telehealth services for certain med-legal evaluations. The Division is taking action in light of the state's stay at home order to combat the COVID-19 pandemic.

"During the stay-at-home order (up to May 1, 2020), DWC finds that it may be beneficial for parties to allow telehealth for QME evaluations when an in-person physical examination is not necessary. DWC strongly recommends that all of the following conditions apply to a telehealth evaluation to promote the health and safety of all parties:

1. The injured worker is able to participate in the telehealth evaluation without violating the stay-at-home order.
2. The medical issue in dispute is determined to be essential to an injured worker's benefits and must be addressed no later than May 1, 2020. The dispute must involve:
 - a. An evaluation relating to whether or not the injury is Arising Out of Employment/Course of Employment (AOE/COE),
 - b. Termination of an injured worker's indemnity benefit payments,
 - c. Work restrictions
3. There is written agreement of the injured worker, carrier or employer, and the QME.
4. The telehealth evaluation is consistent with appropriate medical practices and ethical considerations.
5. The QME attests that the evaluation of the injured worker can be done effectively and safely by way of a telehealth evaluation and does not require an in-person physical examination."

The Division says it will reevaluate the situation at the end of April. In the meantime, it also urged all parties to review cases with an eye to canceling or postponing med-legal evaluations where possible. It says this is especially true in cases if "the injured employee's relevant health issues are such that a physical examination done in person has significant likelihood to contribute to the examiner's ability to formulate an accurate diagnosis, or to more accurately gauge the outcome of treatment already provided."



Nick Roxborough

Attorney Nick

Roxborough of Roxborough Pomerance Nye & Adreani, who threatened the legal action to force the Division to act, says the QMEs are appreciative of the Division's effort but maintains that it still falls short of what is needed. "Where it falls short mostly is their methodology. Their methodology is to opt-in for telemedicine or telehealth options," he tells Workers' Comp Executive. "Asking parties that already have a dispute to then agree amongst themselves to opt-in to a telehealth option is not workable."

Roxborough is urging the Division to make telehealth a default option unless one of the parties objects. He says parties should have to show good cause as to why a telehealth evaluation is unworkable in a particular case and then let the DWC decide if the objection is valid. "We suggest, consistent with the primary goal of delivering necessary medical care to the injured worker promptly, that within 24 to 72

hours after receiving a good cause opt-out notice, the DWC should issue a ruling as to the reasonableness of the opt-out objection,” he says in a letter to Yvonne Hauscarriague, acting chief counsel for DWC.

The QMEs made their request in a March 30 letter to the Division. As of deadline, the Division had not changed its guidance on the opt-in approach to telehealth services for QME evaluations. The Division also notes that these remote evaluations must be more than just a telephone conversation with the injured worker to be valid. “Telehealth options include remote visits via video-conferencing, video-calling, or similar such technology that allows each part to see each other via a video connection,” the Division says.