



California Workers' Compensation Institute
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VIA E-MAIL to dwcrules@dir.ca.gov

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation, Legal Unit
Post Office Box 420603
San Francisco, CA 94142

RE: Forum Comment -- Medical Treatment Utilization Schedule (MTUS), Section 9792.24.2 Chronic Pain Medical Treatment Guidelines

Dear Ms. Gray:

These comments on the Chronic Pain Medical Treatment Guidelines are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 71% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (26% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Alaska National Insurance Company, AmTrust North America, Chubb Group, CNA, CompWest Insurance Company, Crum & Forster, Employers, Everest National Insurance Company, Fireman's Fund Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Group, Springfield Insurance Company, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members are Adventist Health, Agilent Technologies, Chevron Corporation, City and County of San Francisco, City of Santa Ana, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of San Bernardino Risk Management, County of Santa Clara, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Permanente, Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group, Southern California Edison, Sutter Health, University of California, and The Walt Disney Company.

A Single Guideline

The Division is proposing to use the ODG “Treatment in Workers’ Compensation - Chapter on Pain (Chronic)” and the DWC “Guideline for the Use of Opioids to Treat Work-Related Injuries.” The use of a single source for comprehensive medical treatment guidelines is preferable to multiple source guidelines both because high-quality medical treatment guidelines are continually updated and a single guideline is more valuable for the various end-users. Treatment guidelines must, to the extent practicable, create a clear, bright line for physicians, medical treatment reviewers, workers, attorneys, judges, and claims administrators. Adopting single source guidelines that incorporate opioid management and definitive chronic pain guidance will eliminate many of the problems inherent in a patchwork of potentially conflicting and overlapping guidelines that are based on different standards and criteria.

The Legislature adopted evidence-based medicine as the standard of care in California and applied the presumption in order to deliver the highest quality medical care to injured workers, to limit disputes over treatment, and to ensure that the proper treatment will be promptly provided. The Legislature initially incorporated the ACOEM guidelines for the most common work-related injuries. To enhance the utility of the medical treatment utilization schedule (MTUS) based on the ACOEM structure and philosophy, the Legislature added a legal presumption for all medical care sanctioned by the MTUS. The Supreme Court, in State Compensation Insurance Fund v WCAB (Sandhagen) (2008) 73 CCC 981, affirmed that determination; stating in essence, that reasonable and necessary medical care under section 4600 is any treatment provided in accordance with the medical treatment utilization schedule.

As Dr. Das has noted, the goal of chronic pain guidelines is to restore function, reduce pain, and to encourage return to work following injury. In 2004, the Legislature made the social policy decision that treatment necessary to cure and relieve the effects of the industrial injury would be defined by medical evidence supporting its effectiveness. While the ODG guidelines are comprehensive and well documented, the Institute continues to urge the Division to consider similar chronic pain guidelines being developed by ACOEM or other nationally recognized guidelines that are more definitive and specific.

The preferred pain treatment guideline would comprise a single comprehensive set of evidence-based guidelines with clear recommendations (e.g., recommended, not recommended, no recommendation) developed according to a single set of the highest quality standards and criteria. When promulgating the use of treatment guidelines one must keep in mind that the guidelines are not used exclusively by treating physicians. Rather, the Legislature requires that the guidelines be used by injured workers and their physicians, claims examiners, utilization review physicians, IMR, employers, applicants’ attorneys, defense attorneys, judges and the WCAB and the reviewing courts. Therefore, the workers’ compensation community must have treatment guidelines that are as straightforward as modern medical science can make them.

Labor Code Section 4610 charges utilization review physicians with the obligation to determine the appropriateness of requested treatment within very tight time frames. Treatment guidelines that provide clear direction, are well supported by scientific medical evidence, and are based on graded peer reviews are essential for the utilization review system to function as intended. Conversely, a treatment guideline that is indefinite and overly conditional is in conflict with the statutory requirements.

Efficacious Treatment and Functional Improvement

The essential determination of whether a treatment modality is effective is whether the pain is adequately controlled and whether the worker's ability to function improves. Treatment guidelines should include definitive milestones and directions to physicians with regard to validating the course of treatment and recommending alternatives. The proposed guidelines, which incorporate DWC opioid use guidelines and ODG chronic pain guidelines, lack specificity in recommendations, validation, and goals with regard to functional improvement.

Effective Date of Guidelines

The chronic pain medical treatment guidelines consist of an introduction (Part 1) and specific interventions and treatments for chronic pain (Part 2), based on the ODG Chapter on Pain. For guidelines regarding opioid use, physicians are to refer to the DWC "Guideline for the Use of Opioids to Treat Work-Related Injuries." It is therefore essential that these regulations become effective at the same time.

Thank you for considering these recommendations and comments. Please contact me if additional clarification would be helpful.

Sincerely,

Brenda Ramirez
Claims & Medical Director

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Senior Research Associate

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BR:SLJ:MMc/pm

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