

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Workers' Compensation

**NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS**

**Workers' Compensation: Medical Treatment Utilization Schedule**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS,**  
**SECTIONS 9792.20 – 9792.26**

**NOTICE IS HEREBY GIVEN**, that the Acting Administrative Director of the Division of Workers' Compensation (hereinafter "Acting Administrative Director") pursuant to the authority vested in her by Labor Code Sections 59, 133, 4600, 4604.5, 5307.3 and 5307.27, proposes to adopt or modify the text of the following proposed regulations:

Amend Section 9792.20	Medical Treatment Utilization Schedule - Definitions
Amend Section 9792.21	Medical Treatment Utilization Schedule; Medical Literature Search Sequence
Amend Section 9792.25	Strength of Evidence – Definitions
Adopt Section 9792.25.1	Strength of Evidence – Method for Evaluating the Quality of Evidence Used to Support a Recommendation; MTUS Hierarchy of Evidence for Different Clinical Questions
Amend Section 9792.26	Medical Evidence Evaluation Advisory Committee

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
P.O. Box 420603  
San Francisco, CA 94612

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on August 30, 2014. Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

Due to the inherent risks of non-delivery by facsimile transmission, the Acting Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

**Comments sent to other e-mail addresses or facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

## **AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE**

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17<sup>th</sup> Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

## **FORMAT OF PROPOSED MODIFICATIONS**

### **Proposed Text Noticed for 45-Day Comment Period:**

The proposed text was indicated by underlining, thus: added language. Deletions are indicated by strikeout, thus: ~~deleted language~~.

### **Proposed Text Noticed for 15-Day Comment Period on Modified Text:**

The proposed text was indicated by italics and underlining, thus: *added language*. Deletions are indicated by italics and strikeout, thus: ~~*deleted language*~~.

## **SUMMARY OF PROPOSED CHANGES**

### **Section 9792.20 Medical Treatment Utilization Schedule – Definitions**

- This section is re-lettered in its entirety to accommodate deletions to two terms, “American College of Occupational and Environmental Medicine (ACOEM)”, and “MEDLINE”.
- Subdivision (a) the definition of “American College of Occupational and Environmental Medicine (ACOEM)” is deleted as unnecessary and duplicative because the acronym “ACOEM” sufficiently defines the American College of Occupational and Environmental Medicine.
- Subdivision (a) is re-lettered from (b) and the definition of “ACOEM Practice Guidelines” is amended to delete the phrase “Practice Guideline” because the acronym is used in the regulations without the phrase “Practice Guideline” attached to it. The phrase “published by the Reed Group containing evidenced-based medical treatment guidelines for conditions commonly associated with the workplace” is added for clarity. The phrase “2<sup>nd</sup> Edition (2004)” is deleted as unnecessary because the sections in which ACOEM has been

incorporated by reference into our regulations, are sufficiently cited in sections 9792.22(a), 9792.23.1(a), 9792.23.2(a), 9792.23.3(a), 9792.23.4(a), 9792.23.5(a), 9792.23.6(a), 9792.23.7(a), 9792.23.8(a), and 9792.23.9(a). The phrase “A copy” is deleted and replaced with “ACOEM guidelines” for specificity and clarity.

- Subdivision (i) the definition of “MEDLINE” is deleted because it is no longer used in the regulations.

### **Proposed Amendments to Section 9792.21 – Medical Treatment Utilization Schedule; Medical Literature Search Sequence**

- Subdivision (d) is amended to add the phrase “recommended guidelines set forth in the” to more specifically describe the area within the MTUS that contains recommendations that “are” presumptively correct. The words “a” and “and” are added and the word “the” and the phrase “The MTUS” are deleted in order to combine two sentences together to better maintain the flow of the thought.
- Subdivisions (e) is deleted and replaced with “When the MTUS’s presumption of correctness is challenged pursuant to Labor Code section 4604.5 or when there is a topical gap and a medical treatment or a diagnostic test is not addressed by the recommended guidelines set forth in the MTUS, medical care shall be in accordance with the best available medical evidence found in scientifically and evidenced-based medical treatment guidelines or peer-reviewed published studies that are nationally recognized by the medical community.” This amendment was made to be more concise and less-wordy and as a result, this proposed language can now replace subdivisions (e), (e)(1), (f), and (g).
- Subdivision (e)(1) is deleted and replaced with more concise language contained in subdivision (e).
- Subdivision (f) is deleted and replaced with the phrase “To find the best available medical evidence requires a search of the large body of medical literature. Conducting a comprehensive medical literature search is resource-intensive. Therefore, in the interest of efficiency and consistency, the medical literature search sequence set forth in subdivision 9792.21(g) shall be sufficient and applies to the following physicians:.”
- Subdivision (f)(1) is added to state “Treating physicians may apply the medical literature search sequence set forth in subdivision 9792.21(g) to find a recommendation that supports their Request for Authorization” to clarify a medical literature search is voluntary for treating physicians and that to find a recommendation can help support a treating physicians Request for Authorization.
- Subdivision (f)(2) is added to state “Utilization Review physicians shall apply the medical literature search sequence set forth in subdivision 9792.21(g) if the requesting treating physician cited a recommendation in the chart notes or Request for Authorization and the requested treatment or diagnostic service is being denied” to clarify a medical literature search is mandatory for Utilization Review physicians only in situations described in this subdivision.

- Subdivision (f)(3) is added to state “Independent Medical Review physicians shall apply the medical literature search sequence set forth in subdivision 9792.21(g) to ensure that medical care is in accordance with the best available medical evidence found in scientifically and evidenced-based medical treatment guidelines or peer-reviewed studies that are nationally recognized by the medical community” to clarify a medical literature search is mandatory for Independent Medical Review physicians.
- Subdivision (g) is deleted and replaced with the phrase “Medical literature search sequence to find the best available medical evidence:” to set forth the medical literature search sequence to be applied to find the best available medical evidence.
- Subdivision (g)(1) replaces subdivision (k)(1) and is revised to add the phrase “of ACOEM or ODG” to clarify it is the guideline that must be the current version no more than five years old, but the recommendations in the guideline may be supported with scientific evidence that is older than five years old.
- Subdivision (g)(2) replaces subdivision (k)(2) to add the phrase “of the medical treatment guideline” to clarify it is the guideline that must be the current version no more than five years old, but the recommendation in the guideline may be supported with scientific evidence that is older than five years old.
- Subdivision (g)(3) replaces subdivision (k)(3) to delete the phrase “five years old or less” because there may be seminal scientific studies that are older than five years old that are still the best available evidence.
- Subdivision (h) replaces subdivision (j) and is amended to delete the phrase “conducting a” and add the phrase “applying the” for consistency in the use of the term. The phrase “sequence set forth in section 9792.21(g)” is added for specificity.
- Subdivision (i) replaces subdivision (k) and is amended to delete the phrase “strength of evidence methodology” and replace it with the phrase “MTUS Hierarchy of Evidence for Different Clinical Questions” for specificity. The phrase “Medical care that is reasonably necessary to cure or relieve the injured worker from the effects of his or her injury shall be in accordance with the recommendation supported with the best available medical evidence” is deleted and is incorporated at the end of subdivision (i)(2).
- Subdivision (i)(1) is added to state, “Utilization Review physicians shall apply the MTUS Hierarchy of Evidence for Different Clinical Questions if the treating physician cited a recommendation in the chart notes or Request for Authorization and the requested treatment or diagnostic service is being denied. In these situations, Utilization Review decisions shall clearly document the levels of evidence as set forth in the MTUS Hierarchy of Evidence for Different Clinical Questions (e.g. 1a, 1b, 2, etc.) between the recommendation cited by the treating physician and the recommendation used to deny the treatment or diagnostic service request” to clarify when the Utilization Review physician is required to apply the MTUS Hierarchy of Evidence for Different Clinical Questions and how the levels of evidence shall be documented in the Utilization Review decision.

- Subdivision (i)(2) is added to state, “Independent Medical Review physicians shall apply the MTUS Hierarchy of Evidence for Different Clinical Questions if there is a dispute between the recommendations cited by the treating physician and the Utilization Review physician or if the best available medical evidence found in scientifically and evidenced-based medical treatment guidelines or peer-reviewed studies that are nationally recognized by the medical community was not cited by either the treating physician or the Utilization Review physician and the IMR reviewer is able to cite a recommendation supported with stronger medical evidence. In these situations, the Independent Medical Review decisions shall clearly document the levels of evidence as set forth in the MTUS Hierarchy of Evidence for Different Clinical Questions (e.g. 1a, 1b, 2, etc.) for all recommendations cited including any recommendations cited by the Independent Medical Review physician. The Independent Medical Review decision shall contain the recommendation supported with the best available medical evidence which determines medical care that is reasonably necessary to cure or relieve the injured worker from the effects of his or her injury” to clarify when the Independent Medical Review physician is required to apply the MTUS Hierarchy of Evidence for Different Clinical Questions and how the levels of evidence shall be documented in the Independent Medical Review decision.
- Subdivision (j) is added to allow employers, at their discretion, to approve medical treatment or diagnostic services for patients with unique medical circumstances that warrants medical treatment at variance with the recommended guidelines set forth in the MTUS and/or with the best available medical evidence. In these situations, the treating physician shall provide clear documentation of the clinical rationale focusing on objective functional gains afforded by the requested treatment and impact upon prognosis.

#### **Proposed Amendments to section 9792.25 – Strength of Evidence – Definitions**

- Subdivision (a)(1) is amended to add “the Administrative Director adopts and incorporates by reference the Appraisal of Guidelines for Research & Evaluation II (AGREE II) Instrument, May 2009 into the MTUS” from the [www.agreetrust.org](http://www.agreetrust.org) website. A copy of the AGREE II Instrument, May 2009 version may be obtained from DWC via mail or from DWC’s web site at <http://www.dwc.ca.gov>.

#### **Proposed Amendments to section 9792.25.1 - Strength of Evidence - Method for Evaluating the Quality of Evidence used to Support a Recommendation; MTUS Hierarchy of Evidence for Different Clinical Questions**

- Subdivision 9792.25.1(a)(1) is amended to delete the word “condition” and replace it with the word “treatment” for accuracy and consistency with how this phrase is used throughout the regulations.

#### **Proposed Amendments to section 9792.26 – Medical Evidence Evaluation Advisory Committee**

- Subdivision (e) is amended to add “May 2009” where applicable to specify the Appraisal of Guideline for Research & Evaluation II (AGREE II) version used by MEEAC is the May 2009 version. The phrase “and can be” is deleted and replaced with the word “was” to indicate the AGREE II, May 2009 version was found in the following website:

www.agreetrust.org. The phrase “A copy of the AGREE II Instrument, May 2009 version may be obtained from the Medical Unit, Division of Workers’ Compensation, P.O. Box 71010, Oakland, CA 94612-1486, or from the DWC web site at <http://www.dwc.ca.gov>” to clarify with the interested public where a copy may be obtained.

- Subdivision (e)(1) is amended to delete the word “original” and add the phrase “May 2009 version” to clarify which AGREE II instrument is used by MEEAC.