



California Workers' Compensation Institute
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January 13, 2015

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: 3rd 15-Day Comments – Medical Treatment Utilization Schedule (MTUS)

Dear Ms. Gray:

These comments on additional modifications to proposed revisions to the Medical Treatment Utilization Schedule (MTUS) regulations are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 74% 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 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, Republic Indemnity Company of America, 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 include 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 Alameda, 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.

Recommended revisions to the modified proposed Medical Treatment Utilization (MTUS) regulations are indicated by **underscore** and **strikeout**. Comments and discussion by the Institute are indented and identified by *italicized text*.

§ 9792.21.1 Medical Evidence Search Sequence

(b) After conducting the medical evidence search in the sequence specified above:

Recommendation

(1) ~~Treating Physicians—Treatment~~

(A) If the treating physician believes the medical condition or injury is not addressed by the MTUS, then the treating physician ~~may~~ shall provide in the Request for Authorization (RFA) or in an attachment to the RFA a citation to the guideline recommendation or and to the supporting study ~~containing the recommendation he or she believes guides the reasonableness and necessity of the requested treatment~~ that is applicable to the injured worker's medical condition or injury and the requested treatment.

1. The citation provided by the treating physician shall be the primary source relied upon which he or she believes contains the recommendation that guides the reasonableness and necessity of the requested treatment that is applicable to the injured worker's medical condition or injury and the requested treatment.

2. If the treating physician provides more than one citation, then a narrative shall be included by the treating physician in the RFA or in an attachment to the RFA explaining how each additional guideline recommendation or and supporting study cited provides additional information that guides the reasonableness and necessity of the requested treatment that is applicable to the injured worker's medical condition or injury and the requested treatment but is not addressed by the primary source cited.

(B) If the medical condition or injury is addressed by the MTUS but the treating physician is attempting to rebut the MTUS' presumption of correctness, then the treating physician shall provide in the RFA or in an attachment to the RFA the following: a clear and concise statement that the MTUS' presumption of correctness is being challenged; a citation to the guideline recommendation and to the supporting or study ~~containing the recommendation~~ he or she believes guides the reasonableness and necessity of the requested treatment that is applicable to the injured worker's medical condition or injury and the requested treatment; and a copy of the entire supporting study or the relevant sections of the guideline containing the recommendation he or she believes guides the reasonableness and necessity of the requested treatment rebuts the MTUS presumption of correctness that is applicable to the injured worker's medical condition or injury.

1. The citation and copy of the supporting study or copy of and the relevant sections of the guideline provided by the treating physician shall be the primary source relied upon which he or she believes contains the recommendation that guides the reasonableness and necessity of the requested treatment that is applicable to the injured worker's medical condition or injury and the requested treatment.

2. If the treating physician provides more than one citation, then a copy of the additional study(ies) or copy of the additional relevant sections of the guideline(s) along with a narrative shall be included by the treating physician in the RFA or in an attachment to the RFA explaining how each additional guideline or study cited provides additional information that guides the reasonableness and necessity of the requested treatment that is applicable to the injured worker's medical condition or injury and the requested treatment but is not addressed by the primary source cited.

Discussion

If the treating physician believes the medical condition or injury is not addressed by the MTUS, it is reasonable to require the treating physician to cite another guideline and supporting study in order for the UR and IMR reviewers to review its appropriateness, therefore it is necessary to replace the “may” with “shall” in (b)(1)(A).

The Institute suggests deleting throughout the phrase: “containing the recommendation he or she believes guides the reasonableness and necessity of the requested treatment” because the term is unnecessary and removing it adds clarity. We suggest adding where recommended the phrase: “and the requested treatment” because cited guidelines and supporting studies must be applicable to not only the injured worker’s medical condition, but also to the requested treatment.

The Institute recommends modifying the language to require the treating physician to cite the guideline containing his or her recommendation and the supporting study/studies. If the injury or medical condition is not addressed in the MTUS, treatment must be pursuant to other evidence-based medical treatment guidelines since Labor Code Section 4604.5(d) specifically states:

*“For all injuries not covered by the official utilization schedule adopted pursuant to Section 5307.27, authorized treatment shall be in accordance with other evidence-based medical treatment **guidelines** that are recognized generally by the national medical community and scientifically based.”*

In addition, a study is not meant to include a treatment recommendation, but rather to evaluate medical evidence that may be used to support a treatment recommendation.

Other recommended changes to (b)(1) are suggested to improve flow and clarity.

Recommendation

(2) Utilization Review **Physicians**

(A) If the RFA is being modified, delayed or denied, then ~~the Utilization Review physician shall provide in the Utilization Review decision, in addition to the requirements set forth in shall be provided pursuant to~~ section 9792.9.1(e), ~~and shall include a citation to the guideline recommendation or study containing the recommendation he or she believes guides the reasonableness and necessity of the requested treatment~~ that is applicable to the injured worker’s medical condition or injury.

1. The citation provided ~~by the Utilization Review physician~~ shall be the primary source relied upon ~~in the determination which he or she believes contains the recommendation that guides the reasonableness and necessity of the requested treatment that is applicable to the injured worker’s medical condition or injury.~~

2. If ~~the Utilization Review physician provides~~ more than one citation ~~is provided~~, then a narrative shall be included ~~by the reviewing physician~~ in the Utilization Review decision explaining how each ~~additional guideline recommendation or and supporting study cited provided additional information that guides the reasonableness and necessity of the requested treatment~~ that is applicable to the injured worker’s medical condition or injury but is not addressed by the primary source cited.

Discussion

The proposed language in (b)(2) that limits the requirement to the UR physician is in conflict with section 9792.1(e)(5) which states that:

*“the decision shall be signed by **either** the claims administrator or the reviewer.”*

Since it is clear that either the claims administrator or the reviewer may report the decision made by the Utilization Review physician to modify, delay or deny the RFA and since either can also report the citations, the Institute recommends removing the requirement for only the Utilization Review physician to do so.

If the Administrative Director accepts the preceding recommendation, the heading for (b)(2) should be revised to “Utilization Review” since (b)(2) does not pertain only to the Utilization Review Physician. And for consistency, the Institute suggests also revising the heading for (b)(1) to “Treatment,” and the heading for (b)(3) to “Independent Medical Review.”

Because section 9792.9.1(e)(5)(F) already requires the written decision modifying, delaying or denying treatment authorization to include:

“a clear, concise, and appropriate explanation of the reasons for the reviewing physician’s decision, including the clinical reasons regarding medical necessity and a description of the relevant medical criteria or guidelines used to reach the decision pursuant to section 9792.8,”

it is necessary only to add language expressly requiring the citation to be included.

Other recommended changes to (b)(2) are suggested to improve flow and clarity.

Recommendation

(3) Independent Medical Review **Physicians**

(A) If the Utilization Review Decision delays, denies or modifies an injured **workers’ worker’s** request for treatment and review of that decision is requested through Independent Medical Review, then the Independent Medical Review physician shall provide in the Independent Medical Review decision, in addition to the requirements set forth in section 9792.10.6(d), a citation to the guideline **recommendation and supporting or study containing the recommendation that guides the reasonableness and necessity of the requested treatment** that is **determined** applicable to the injured worker’s medical condition or injury.

1. The citation provided by the Independent Medical Review physician shall be the primary source he or she relied upon **which contains the recommendation that guides the reasonableness and necessity of the requested treatment** that is applicable to the injured worker’s medical condition or injury.

2. If the Independent Medical Review physician **provides-relied upon** more than one citation, then a narrative shall be included by the reviewing physician in the Independent Medical Review decision explaining how each guideline **recommendation and supporting or study** cited provides additional information that **guides the reasonableness and necessity of the requested treatment** **that** is applicable to the injured worker’s medical condition or injury but is not addressed by the primary source cited.

Discussion

Additional recommended changes to (b)(3) are suggested to improve flow and clarity.

Recommendation

(c) If the treating physician and/or the Utilization Review physician and/or the Independent Medical Review physician cited different guidelines or studies containing recommendations that are at variance with one another, the MTUS Methodology for Evaluating Medical Evidence set forth in section 9792.25.1 shall be applied by the reviewing physician to determine which one of the recommendations is supported by the best available evidence.

Discussion

The IMR reviewer must resolve the dispute by appropriately determining which of the two recommendations is supported by the best evidence. The IMR reviewer lacks the authority to propose a treatment recommendation of his or her own.

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

Sincerely,

Brenda Ramirez
Claims & Medical Director

BR/pm

cc: Christine Baker, DIR Director
Destie Overpeck, DWC Acting Administrative Director
Dr. Rupali Das, DWC Executive Medical Director
John Cortes, DWC Attorney
CWCI Claims Committee
CWCI Medical Care Committee
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CWCI Associate Members
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