



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

March 10, 2017

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 - Draft Revisions to the Medical Treatment Utilization
Schedule Regulations**

Dear Ms. Gray:

These Forum comments on revisions to the Medical Treatment Utilization Schedule (MTUS) regulations are presented on behalf of the members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 83% of California's workers' compensation premium, and self-insured employers with \$57B of annual payroll (26% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Alaska National Insurance Company, Allianz Global Corporate and Specialty, AmTrust North America, Berkshire Hathaway, CHUBB, CNA, CompWest Insurance Company, Crum & Forster, EMPLOYERS, Everest National Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Insurance, Republic Indemnity Company of America, Sentry Insurance, 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, BETA Healthcare Group, California Joint Powers Insurance Authority, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, 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, Special District Risk Management Authority, Sutter Health, University of California, and The Walt Disney Company.

Recommended revisions to the draft regulations are indicated by highlighted **underscore** and **strikeout**. Comments and discussion by the Institute are indented and identified by *italicized text*.

Forum Comment

Senate Bill 1160 revised Labor Code section 5307.27(a) to require that evidence-based updates to the MTUS are made through an order exempt from the Administrative Procedure Act after the administrative director has allowed at least a 30-day public comment period, a public hearing, and has provided responses to submitted comments. California Workers' Compensation Institute is pleased to support the revisions to the Medical Treatment Utilization Schedule (MTUS) regulations that expedite the updating of MTUS treatment guidelines to their most current versions.

However the Institute believes that Labor Code section 5307.27 gives the administrative director authority to use the abbreviated non-APA process to update existing MTUS treatment guidelines to their most current versions, but not to adopt new MTUS treatment guidelines.

§ 9792.25. MTUS Methodology for Evaluating Medical Evidence.

Recommendation

(a) When competing recommendations are cited to guide medical care, Utilization Review and Independent Medical Review physicians shall apply the MTUS Methodology for Evaluating Medical Evidence to evaluate the quality and strength of evidence used to support the recommendations that are at variance with one another. The MTUS Methodology for Evaluating Medical Evidence provides a process to evaluate studies, not guidelines. Therefore, the reviewing physician shall evaluate the underlying study or studies used to support a recommendation found in a guideline. Medical care that is reasonably required to cure or relieve the injured worker from the effects of his or her injury shall be **guided by in accordance with** the recommendation supported by the best available evidence. The MTUS Methodology for Evaluating Medical Evidence shall be applied as follows:

Discussion

The term "in accordance with" is preferable to "guided by" because "in accordance with" is directory while "guided by" is advisory. Furthermore, "in accordance with" is the term used in Labor Code section 4604.5(d) to signify what is required when other medical treatment guidelines are utilized.

Thank you for the opportunity to comment, and please contact me if additional information would be helpful.

Sincerely,

Brenda Ramirez and Denise Niber
Claims & Medical Directors

BR:DN/pm

cc: Christine Baker, DIR Director
George Parisotto, DWC Acting Administrative Director
Raymond Meister M.D., DWC Executive Medical Director

John Cortes, DIR Counsel
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members