

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

**NOTICE OF PROPOSED EVIDENCE-BASED UPDATES TO THE MEDICAL
TREATMENT UTILIZATION SCHEDULE**

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), pursuant to the authority vested in him by Labor Code section 5307.27, subdivision (a), proposes evidence-based updates to the Medical Treatment Utilization Schedule (MTUS) contained in Article 5.5.2 of Chapter 4.5, Subchapter 1, Division 1, of Title 8, California Code of Regulations, section 9792.23. These proposed evidence-based updates to the MTUS incorporate by reference the most recent American College of Occupational and Environmental Medicine's (ACOEM) treatment guidelines into the Clinical Topics section of the MTUS.

PROPOSED EVIDENCE-BASED UPDATES TO THE MTUS

The Department of Industrial Relations, Division of Workers' Compensation, proposes evidence-based updates to the following sections of the MTUS, contained in Article 5.5.2 of Chapter 4.5, Subchapter 1, Division 1, of Title 8, California Code of Regulations:

- § 9792.23.5 Low Back Disorders Guideline
- § 9792.23.8 Workplace Mental Health Guideline

AUTHORITY AND REFERENCE

The Administrative Director is undertaking these evidence-based updates to the MTUS pursuant to the authority vested in him by Labor Code section 5307.27, subdivision (a). Reference is to Labor Code sections 4600, 4604.5, 5307.3, 5307.4, and 5307.27.

EXEMPTION FROM ADMINISTRATIVE PROCEDURE ACT

Pursuant to Labor Code section 5307.27, subdivision (a), the amendment of these regulations is exempt from Labor Code sections 5307.3 and 5307.4 and the rulemaking provisions of the Administrative Procedure Act (APA) (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

INFORMATIVE DIGEST/POLICY OVERVIEW/STATEMENT OF REASONS

Labor Code section 5307.27 requires the Administrative Director to adopt the MTUS that incorporates evidence-based, peer-reviewed, and nationally-recognized standards of care of all treatment procedures and modalities commonly performed in workers' compensation cases.

Labor Code section 4604.5 states, “the recommended guidelines set forth in the medical treatment utilization schedule...shall be presumptively correct on the issue of extent and scope of medical treatment.” This presumption is rebuttable and may be controverted by a preponderance of scientific medical evidence establishing that a variance from the guidelines is reasonably required to cure or relieve the injured worker from the effects of his or her industrial injury.

The Administrative Director established and adopted the MTUS on June 15, 2007. The MTUS was subsequently amended over the years, under the rulemaking provisions of the APA. At the end of 2017, amendments to the MTUS were made for the first time pursuant to Labor Code section 5307.27, subdivision (a), authorizing evidence-based updates to the MTUS by an Administrative Director order exempt from Labor Code sections 5307.3 and 5307.4, and the rulemaking provisions of the APA. This amendment to Labor Code section 5307.27, subdivision (a), was made to ensure medical treatment is based on the latest scientific research and to ensure that outdated guidelines in the MTUS are replaced by up-to-date treatment guidelines.

The MTUS is the primary source to determine the standard of care in California’s workers’ compensation system. Recommendations found in the MTUS guidelines are presumptively correct on the issue of extent and scope of medical treatment. Although the MTUS’ presumption of correctness may be rebutted by a preponderance of scientific medical evidence, it is important that the treatment recommendations found in the MTUS accurately represent the current standard of medical care. MTUS treatment guidelines that comprehensively incorporate recommendations supported by the best available, up-to-date scientific studies provide guidance for new medical treatments, drugs, or diagnostic tools and instill confidence that the standard of care is accurately represented. On the other hand, if the guidelines are outdated, the recommendations will likely be subject to frequent attempts to rebut the presumption of correctness, resulting in delayed delivery of medical care to injured workers and an increase in frictional costs to treating physicians and employers.

Accordingly, this Administrative Director order makes evidence-based updates to the MTUS by replacing an outdated guideline with the most recent ACOEM treatment guideline supported by the latest scientific research. Updates to the current codified MTUS are shown in strikethrough to indicate deletions and underscore to show additions.

The proposed evidence-based updates to the MTUS to implement Labor Code section 5307.27 are as follows:

§ 9792.23.5. Low Back Disorders Guideline.

This section contains the guideline for treatment and evaluation of the low back region. This section is being amended to update the MTUS’ medical treatment guidelines so that recommendations pertaining to the low back region represent current evidence-based standards of care.

§ 9792.23.8. Workplace Mental Health Guideline.

This section contains the guideline for treatment and evaluation of workplace mental health. This section is being amended to add the Introduction to the Workplace Mental Health Guideline which sets forth the basic principles, definitions, diagnostic tools and screening tools used throughout the Workplace Mental Health Guideline modules. This introduction also contains recommendations pertaining to return-to-work programs that represent current evidence-based standards of care.

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the proposed evidence-based updates to the MTUS, on the following date:

Date: May 6, 2019

Time: 10:00 a.m. to 5:00 p.m., or until conclusion of business

Place: Elihu Harris State Office Building - Auditorium

1515 Clay Street

Oakland, CA 94612

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Maureen Gray, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 A.M. and will conclude when the last speaker has finished his or her presentation or 5:00 P.M., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed evidence-based updates to the MTUS to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes on May 6, 2019. The Division of Workers' Compensation will only consider comments received at the Department of Industrial Relations, Division of Workers' Compensation by that date. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to the DWC contact person:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

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.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than May 6, 2019.

CONTACT PERSON

Inquiries concerning this action, such as requests to be added to the mailing list or requests for copies of the text of the proposed regulations may be directed to the contact person:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov
Telephone: (510) 286-7100

CONTACT PERSON

In the event the contact person is unavailable, inquiries may be directed to:

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