

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

ADDENDUM TO FINAL STATEMENT OF REASONS

Workers' Compensation: Medical Treatment Utilization Schedule

TITLE 8, CALIFORNIA CODE OF REGULATIONS,

SECTIONS 9792.23(b)(1), 9792.24.2 and 9792.24.4

CHANGES IN REGULATORY TEXT

After submission of these proposed regulations for review by the Office of Administrative Law, the Division made a number of changes to the proposed regulations as suggested by that Office. Those changes include: (1) correction to a strikethrough to include a period; (2) correction to an underline that inadvertently included a period; (3) correction to an underline to include the letter "s" in the word "Guidelines"; and (4) correction to text that was indicated by a strikethrough but was inadvertently included but should have been deleted. These changes are non-substantive and will not affect the meaning, interpretation or implementation of the regulations as the meanings of the regulations are apparent from the text of the regulations.

The changes are as follows:

1. Section 9792.24.2(a):
 - a. Page 1, the strikethrough is extended to include the period before the last sentence.
 - Correction made to the strikethrough so that it deletes a period.
2. Section 9792.24.2(b):
 - a. Page 2, the underline is deleted over the period.
 - Correction made to the underline so that it does not include the period.
3. Section 9792.24.2(d):
 - a. Page 2, an underline is added under the letter "s" the last time the word "Guidelines" is used.
 - Correction to the underline to include the letter "s".

4. Section 9792.24.4(b):
 - a. Page 3, the phrase with strikethrough “alternative therapies do not provide adequate pain relief and” is deleted.
 - Correction to the text to delete a phrase that was inadvertently included but should have been deleted.

CHANGES IN THE CHRONIC PAIN MEDICAL TREATMENT GUIDELINES AND THE OPIOIDS TREATMENT GUIDELINES TEXT

After submission of these proposed regulations for review by the Office of Administrative Law, the Division made a number of changes to the proposed Chronic Pain Medical Treatment Guidelines and the Opioids Treatment Guidelines as suggested by that Office. The changes to the Chronic Pain Medical Treatment Guidelines includes a correction to a typographical error to a citation of an existing regulation and the addition of an introductory paragraph before Part 2 in order to maintain consistency with the last time the MTUS Chronic Pain Medical Treatment Guidelines were updated in 2009. As a result of the addition of this introductory paragraph before Part 2, the Table of Contents was revised accordingly. The change to the Opioids Treatment Guidelines includes the insertion of the word “months” between “or more” and “from” in the first sentence of Section 3, page 33. These changes are non-substantive and will not affect the meaning, interpretation or implementation of the regulations nor the documents incorporated by reference as their meanings are apparent from the text of the documents incorporated by reference.

The changes to the Chronic Pain Medical Treatment Guidelines are as follows:

Page 9, second to the last paragraph, last sentence the citation to “8 CCR § 9792.20(f)” is corrected to state “8 CCR § 9792.20(e)” which is the correct citation to the definition of the term “functional improvement”.

- Correction to the citation that defines the term “functional improvement” to correct a typographical error.

Page 14, add:

“Introduction to Part 2

All of the following (listed alphabetically) treatment recommendations are adapted from ODG. For those individual treatment guideline topics where the frequency, duration and intensity of the treatment are not addressed, the following principles apply as set forth in PART 1: Introduction of these guidelines. Duration of the treatment shall be consistent with the definition of chronic pain as set forth in Section 9792.20(b) and page 2 of these guidelines, and the treatment shall be provided as long as the pain persists beyond the anticipated time of healing and throughout the duration of the chronic pain condition. The

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duration of continued medication treatment for chronic pain depends on the physician's evaluation of progress toward treatment objectives, efficacy, and side effects as set forth in the Introduction of these guidelines at page 10. With regard to the frequency and intensity requirements, the treating physician is required, as stated in the Introduction of these guidelines at page 10, to exercise clinical judgment by "tailor[ing] medications and dosages to the individual taking into consideration patient-specific variables such as comorbidities, other medications, and allergies." The physician shall be "knowledgeable regarding prescribing information and adjust the dosing [i.e. how often {frequency} and how much {intensity}] to the individual patient" as stated in these guidelines at page 10 of the Introduction. Clinical judgment shall be applied to determine frequency and intensity and "[s]election of treatment must be tailored for the individual case" as stated in the Introduction of these guidelines at page 11."

- Correction to the text to add a paragraph consistent with the 2009 filing, when the MTUS Chronic Pain Medical Treatment Guidelines were last updated.

Page i, Table of Contents add "Introduction to PART 2" before the beginning of "Part 2: Official Disability Guidelines (ODG) Treatment in Workers' Compensation – Chronic Pain (Chronic).

- Correction to the text of the Table of Contents to include "Introduction to PART 2" as a result of the inclusion of this new paragraph.

The changes to the Opioids Medical Treatment Guidelines are as follows:

Page 33, first sentence of section 3, add the word "months" between "or more" and "from".

- Correction to the text to add the word "months" to correct a typographical omission.

Updated Technical, Theoretical, Or Empirical Studies, Reports, Or Documents Upon Which The Division Relied Upon

All modifications from the Initial Statement of Reasons, item number 3, list of "Technical, Theoretical, or Empirical Studies, Reports, or Documents Upon Which the Division Relied Upon" are listed below. The documents that were missing from the Initial Statement of Reasons were contained in the rulemaking file and if requested by a member of the public, would have been available.

The following documents are added to the documents relied upon list:

California Code of Regulations, title 8, sections 9792.23(b)(1), 9792.24.2 and 9792.24.4
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Chronic Pain Guideline. *ACOEM Occupational Medicine Practice Guidelines*-part of Reed Group® Disability Guidelines™, Copyright 2008-2014 Reed Group, Ltd., www.DisabilityGuidelines.com. All rights reserved.

Martucci, K. Ng P. Mackey S. Neuroimaging chronic pain: what have we learned and where are we going? *Future Neurol*, 2014;9(6): 615-626.

ACOEM's Chronic Pain Guideline is added to the list because the DWC inadvertently omitted it from the Initial Statement of Reasons and the Final Statement of Reasons. Although this document was not identified as a document relied upon, it was included in the Chronic Pain Medical Treatment Guidelines, in the "References for Introduction" section (pages 12-13), and published for public comment in both the 45-Day Comment Period and the 15-Day Comment Period.

Martucci, K. Ng P. Mackey S. is added to the list because the DWC inadvertently omitted it from the Initial Statement of Reasons and the Final Statement of Reasons. Although this document was not identified as a document relied upon, it was included in the Chronic Pain Medical Treatment Guidelines, in the "References for Introduction" section (pages 12-13), and published for public comment in both the 45-Day Comment Period and the 15-Day Comment Period.

The following reference is revised to correct a typographical error:

Work Loss Data Institute. (2013). ODG Evidence-Based Medical Treatment and Return-to-Work Guidelines (Official Disability Guidelines). Chronic Pain Chapter (updated 4/6/13).

The DWC incorrectly typed the dates "2013" and "updated 4/6/13" and amends this typographical error to state "2015" and "updated 4/6/2015". The typographical error is apparent in the "Opioids Treatment Guidelines, Part 1" page 18, where it states "updated April 6, 2015".

RESPONSE TO OAL'S CONCERNS REGARDING THE COMMENT CHART

After submission of these proposed regulations for review, the Division clarifies that the dates listed for each written comment indicates the date when the Division received the comment and not the date indicated in commenter's letters or e-mails. The Division made changes in the respective comment charts in response to questions raised by the Office of Administrative Law. Changes in the respective comment charts are indicated as follows:

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

The list below provides a brief summary of the changes made and the page number(s) where the changes can be found in the respective comment charts.

45 Day Comment Period Chart:

1. Nicholas P. Roxborough's written comment pertaining to the H-wave stimulation (HWT). Additional text was added responding to commenter's question "please advise us of what new medical evidence" suggests these modifications. In addition, the Division inadvertently failed to respond to commenter's statement that "the ODG entry violates EWL's trademark." The comments, response and action have been added on pages 102-104 of the 45 Day Comment Period Chart.
2. Matthew D. Johnson's written comment contains the word [REDACTED]. The Division redacted the specific names from publication of the UR companies he states "incentivize utilization denial".
3. Jill Rosenthal's written comment requesting the removal of reference to "opioid naïve" patients. Additional text was added responding to commenter's request on pages 311-312 of the 45 Day Comment Period Chart.
4. Lesley Anderson's written comment seeking clarity whether injured workers will experience delays in care as a result of referrals and whether they will be expected to use group health insurance to cover evaluations and the billing disputes that she opines will occur. Additional text was added responding to commenter's request on page 368 of the 45 Day Comment Period Chart.
5. Lesley Anderson's written comment raising the concerns regarding the need for referrals, and the delay in care as a result, the billing disputes she opines will occur and whether injured workers will be expected to use group health insurance to cover these evaluations. Finally, she opines that these more comprehensive evaluations are important for chronic stage pain management but not routine in the acute phase. Additional text was added responding to commenter's request for clarity on pages 369-374 of the 45 Day Comment Period Chart.
6. Phillip M. Lippe's written comment questioning the definition of "neuropathic pain". Additional text was added responding to commenter's request for clarity on page 433 of the 45 Day Comment Period Chart.
7. Phillip M. Lippe's written comment questioning whether we have two standards of care. Additional text was added to correct Lippe's comment where we inadvertently omitted the word "two" between "have" and "standards". The Division added additional text responding to commenter's request for clarity on page 437 of the 45 Day Comment Period Chart.

8. Wayne Whalen's comment was identified as "written" but has been revised to correctly state "oral" on page 440 of the 45 Day Comment Period Chart.

9. Chris Forsyth's comment questions why chiropractic care has been omitted from the list of alternatives to chronic pain management and chronic opioid treatment. Additional text was added responding to commenter's question on pages 443-444 of the 45 Day Comment Period Chart.

10. Monica Miller's comment that she hopes inclusion of chiropractic care as an alternative to opioids was an oversight has been further explained on pages 445-446 of the 45 Day Comment Period Chart.

ADDENDUM TO THE 45 DAY COMMENT PERIOD CHART – ADDITIONAL COMMENTS BY BRENDA RAMIREZ

The Division responded to Brenda Ramirez' comments in the 45 Day Comment Period Chart but inadvertently failed to respond to her additional specific comments found in her attachment to the letter received by the Division on September 1, 2015. As a result, the Division has included an "Addendum to the 45 Day Comment Period Chart – Additional Comments by Brenda Ramirez" which provides responses to Brenda Ramirez' additional comments.

First 15 Day Comment Period:

1. Brenda Ramirez' comments to "consider prohibiting opioid dispensing from physician offices and clinics" the Division inadvertently failed to respond to this comment and provides a response to this comment on page 24 of the 15 Day Comment Period Chart.