EVIDENCE-BASED UPDATES TO THE MEDICAL TREATMENT FEE SCHEDULE	RULEMAKING COMMENTS 30 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9792.22 – General Approaches	Commenter requests that the Division consider clarifying that the General Approach to Initial Assessment and Documentation (July 25, 2016) would replace the current version of General Approach to Initial Assessment and Documentation (from ACOEM Practice Guidelines, 2nd edition (2004), Chapter 2) listed on MDGuidelines as part of CA-MTUS.	Joyce Ho, M.D. Medical Director CompPartners/ Careworks MCS June 18, 2018 Written Comment	Disagree: As proposed, section 9792.22 updates the ACOEM publication dates of the guidelines being adopted, but maintains the language of the current regulations. The clarifying language suggested by Commenter is clearly expressed in the Notice.	None.
General Comment	Commenter opines that the proposed changes are a violation of the right of the public to have free and open access to laws and regulations. States that the injured worker would not be able to access the guidelines without paying an annual fee of $100.00.	Anonymous June 18, 2018 Written Comment	Disagree: The ACOEM guidelines are an extrinsic standard incorporated by reference into the regulations and has been part of the Medical Treatment Utilization Schedule (MTUS) since 2007. There are other examples of copyright protected extrinsic standards incorporated by reference into regulations (i.e. "Current Procedural Terminology" (CPT Codes) published by the American Medical Association into the Official Medical Fee Schedule regulations).	None.

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9792.22 – General Approaches	Commenter notes that the key principle underlying the Medical Treatment Utilization Schedule (MTUS) is that clinical decisions are to be based on Evidence Based Medicine (EBM). He also states that Labor Code Section 5307.27 requires the Administrative Director to adopt an MTUS that incorporates evidence-based, peer-reviewed, and nationally-recognized standards of care for all treatment procedures and modalities commonly performed in workers' compensation cases. Commenter acknowledges that the amendment to this section are updates to the existing ACOEM chapters already incorporated into the MTUS; however, he is concerned that these "best practice" guidelines for physicians should not be included within the MTUS as he opines they do not address "standards of care" nor the frequency, duration, and appropriateness of treatment procedures and modalities. Additionally he states that the	Jason Marcus, Esq. President, California Applicants' Attorneys Association July 17, 2018 Written Comment	Agree. Agree in part; Disagree in part: Agree, the amendments to the General Approaches section are updates to existing ACOEM guidelines already in the MTUS. Disagree, the General Approaches section incorporates foundational guidelines that are already are and should be in the MTUS because they contain standards of care. For example, the Prevention Guideline contains	None. None.

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	ACOEM chapters on Prevention, Initial Assessment and Documentation, and the Cornerstones of Disability Prevention and Management address report writing and other evaluation procedures. Commenter does not see the potential benefit of the ACOEM chapter on Disability Prevention and Management and is concerned that carrier could potentially use the failure of physicians to follow these practice guidelines as a basis to delay or deny medical treatment.		ergonomic recommendations for the design of tasks that involve use of the back to prevent musculoskeletal disorders and injuries. The Cornerstones of Disability Prevention and Management Guideline contains recommendations and factors to consider in order to recognize when recovery and rehabilitation has stalled. The General Approach to Initial Assessment and Documentation Guideline contains recommended summary measures of exposure (or tools) providing lines of query for history taking to ascertain and document work-relatedness of disorders. All of these examples are evidence-based recommendations properly cited with supporting studies. These recommendations are standards of care when read by themselves, or if necessary, in	

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	In order to resolve this conflict with Labor Code section 5307.27 on what should be included in the adoption of the MTUS, commenter recommends the following revised language to Section 9792.22(a): " ~~The Administrative Director adopts and incorporates by reference into the MTUS specific guidelines set forth below from~~…" and the introduction now begin with the following existing language plus the language underlined " The American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines(ACOEM Practice Guidelines) for the following chapters <u>shall be used by physicians evaluating workers' compensation patients</u>."		conjunction with the corresponding Clinical Topics or Special Topics guideline. Disagree: See above response. In addition, Commenter's proposed language suggests the General Approaches Guidelines "shall be used by physicians evaluating workers' compensation patients." This language is unnecessary because the MTUS guideline recommendations are the standard of care for the treatment of injured workers and are already used by "physicians evaluating workers' compensation patients."	None.
9792.24.5 Traumatic Brain Injury Guideline	After review of this guideline, Commenter notes that while there are many treatments on the recommended list, he opines that there are also several care classifications which are "recommended" but qualified with	Jason Marcus, Esq. President, California Applicants' Attorneys Association July 17, 2018	Disagree: ACOEM only supports or refutes intervention recommendations with Randomized Controlled Trials (RCTs) or high-level systematic reviews or meta	None.

EVIDENCE-BASED UPDATES TO THE MEDICAL TREATMENT FEE SCHEDULE	RULEMAKING COMMENTS 30 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	insufficient scientific support. Commenter is concerned this may still pose a problem in obtaining approval for the treatment with this qualification. In addition, Commenter opines there are a number of treatments "not recommended" based on insufficient evidence. He notes that it is unclear how ACOEM made a determination to "not recommend" when other treatments are "recommended" with insufficient scientific support based on "consensus". For example, several attention deficit therapies are not recommended whereas behavioral, cognitive, intelligence, and neuro-psyche testing rank as "Recommended," although at best, they get a "C" level for evidence (or "B" in very few instances.) Commenter supports the "consensus" for diagnostic testing as testing is essential for understanding the extent of a TBI injury. Commenter opines the "consensus" also should be that biofeedback, imaging studies, anti-seizure/convulsant medications,	Written Comment	analyses of RCTs. Many medical interventions have not been as rigorously evaluated or were evaluated in RCTs of such low quality (i.e. sponsored by those with a vested interest in the intervention) that they are considered low quality or insufficient evidence. However, this does not preclude ACOEM from reaching decisions about whether to recommend, or not recommend, or make no recommendations regarding the use of interventions for which they have categorized as supported by insufficient scientific support. ACOEM treatment recommendations categorized with "insufficient recommended" or "insufficient not recommended" are supported by lower-level studies and are based on a consensus by ACOEM's Evidence-based Practice Panel.	

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	NSAIDs for TBI patients, restorative functional skills training, occipital nerve blocks for migraine headaches, neuro-muscular re-education, and perceptual skills training are recommended; however, all these treatments are either not recommended or have no recommendation based on insufficient evidence.		The way in which ACOEM categorizes its recommendations poses no problems in the decision to approve or disapprove a treatment request. The MTUS treatment recommendations are presumptively correct. However, a treating provider may challenge the MTUS' presumption of correctness by citing competing recommendations found outside of the MTUS treatment guidelines. The methodology used by UR and IMR physicians to evaluate competing recommendations, is not the same methodology used by ACOEM in developing their guidelines. When competing recommendations are cited, UR and IMR physicians apply the MTUS Methodology for Evaluating Medical Evidence (section 9792.25.1). Physician reviewers are required to	None.

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			evaluate the underlying study or studies used to support the competing recommendations. Hence, physician reviewers will be evaluating the evidence-base used to support each competing recommendation.	
General Comment	Commenter opines that it is inconceivable that the MTUS will cover all treatment requests to be reviewed in the workers' compensation system because there are not enough scientific, evidence-based studies supporting every possible medical treatment recommendation. Commenter notes that although there appears to be a broad range of evidence available to a physician, he opines the actual number of medical procedures for which high level medical evidence is available is limited. He provides the following example from the 2011 version of the ACOEM Guidelines for Shoulder Disorders:	Jason Marcus, Esq. President, California Applicants' Attorneys Association July 17, 2018 Written Comment	Agree: See above response pages 4-7. Disagree: Goes beyond the scope of this rulemaking. The 2011 ACOEM Shoulder Disorders Guideline is not the	None. None.

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	Table 1 in the ACOEM chapter on Shoulder Disorders includes recommendations for diagnostic testing; covering 10 diagnostic categories with 30 separate treatment recommendations. Of the 30 recommendations, one is based on strong evidence/ Category A while the remaining 29 are based on insufficient evidence/Category I. Table 2 summarizes recommendations for treatment, separated into three categories: (1) Recommended; (2) No Recommendation; and (3) Not Recommended. There are 99 treatment options in Table 2 for which there is "No Recommendation" because there is insufficient evidence/Category I, and 65 treatment options that are "Not Recommended" of which 54 – 7 out of every 8 – are based on insufficient evidence/Category I, Commenter notes that this is not an isolated example and occurs in many chapters of the ACOEM guidelines.		subject of these proposed regulations. Therefore, the DWC has not checked the accuracy of the numbers mentioned in Commenter's examples. Agree: In many ACOEM treatment guidelines there are examples of recommendations categorized with "insufficient	None.

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			recommended" or "insufficient not recommended" or "insufficient no recommendation." See above response pages 4-7.	
	Commenter opines that given the fact that most treatment recommendations in ACOEM are based on insufficient or irreconcilable evidence, a comprehensive medical literature search will not locate a "higher" level of medical evidence unless a new study is published. In essence, the proposed rules require the treating physician to cite evidence that ACOEM has already determined is not available. Commenter opines that these rules significantly hamper the ability of the treating physician to rebut the MTUS, which is specifically authorized by Labor Code § 4604.5(a).		Agree: ACOEM regularly and comprehensively reviews the universe of literature on any given medical intervention. Unless the treating physician cites new studies, it is likely ACOEM's recommendation is already supported by the best available evidence. Disagree: The MTUS regulations make it clear that the presumption of correctness may be rebutted as Commenter points out. However, that is the exception, rather than the rule. The MTUS guideline recommendations are supposed to establish the "standard of care" (Labor Code section 5307.27(a)) for "medical	None. None.

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			treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury" (Labor Code section 4600(a)).	
	Commenter cites the following quote: "In this era of widespread guideline development by private organizations, the American College of Occupational and Environment Medicine (ACOEM) has developed guidelines that evaluate areas of clinical practice well beyond the scope of occupational medicine and yet fail to properly involve physicians expert in these, especially those in the field of interventional pain management. As the field of guidelines suffers from imperfect and incomplete scientific knowledge as well as imperfect and uneven means of applying that knowledge without a single or correct way to develop guidelines, ACOEM guidelines have been alleged to hinder patient care, reduce access to interventional pain management procedures, and transfer		Disagree: Goes beyond the scope of this rulemaking. Neither the Chronic Pain Guideline nor the Opioid Guideline (the guidelines that cover the field of interventional pain management) is the subject of these proposed regulations. In addition, the MTUS allows the MTUS presumption of correctness to be rebutted if the recommendation found outside of the MTUS is supported by higher-quality evidence than the MTUS recommendation.	None.

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	patients into a system of disability, Medicare, and Medicaid." [A critical appraisal of the 2007 American College of Occupational and Environmental Medicine (ACOEM) Practice Guidelines for Interventional Pain Management: an independent review utilizing AGREE AMA, IOM, and other criteria. Manchikanti L, Singh V, Helm S 2nd, Trescot AM, Hirsch JA. Pain Physician. 2008 May-Jun;11(3):291-310.]			
	Commenters states that the goal of all stakeholders in the workers compensation system should be to get the most appropriate treatment to the worker as quickly as possible. It is less costly for the employer and carrier. More importantly, it improves the worker's outcome from the injury. Commenter opines this goal can only be reached if the MTUS is designed to establish a process that truly "allows the integration of the best available research evidence with clinical expertise and patient values."		Agree in part. Disagree in part. Agree with the goal of all stakeholders in the workers' compensation system should be to get the most appropriate treatment to the worker as quickly as possible. Disagree with the inference that the MTUS does not currently allow the integration of the best available research evidence with clinical expertise and patient values. Treatment requests must be supported by the best available	None. None.

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	Commenter notes that ACOEM states in its treatment guidelines that "decisions to adopt particular courses of actions must be made by trained practitioners on the basis of the available resources and the particular circumstances presented by the individual patient." Commenter strongly supports the provision of the highest quality and most effective medical treatment for injured workers, but doesn't support blind adherence to "evidence-based medicine" or "consensus" which denies access to procedures which are desperately needed to treat a worker's injury. Often these procedures must be sought elsewhere if the worker is fortunate enough to have another source of medical coverage through private group health, Medicare, Medicaid, or a union trust fund.		evidence and the accompanying clinical documentation should substantiate the need for the treatment as well as mention any patient values that should be considered by the reviewing physician. Agree in part; Disagree in part: Agree with the provision of the highest quality and most effective medical treatment for injured workers. Disagree with the notion that the MTUS somehow advocates or encourages blind adherence to "evidence-based medicine" or "consensus" which denies access to procedures needed to treat injured workers. The MTUS is based on the principles of evidence-based medicine (EBM). Regulation section 9792.21(b) states, "EBM is a systematic approach to making clinical decisions which allows the	None.

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			integration of the best available evidence with clinical expertise and patient values."	
General Comment	Commenter appreciates the opportunity to provide input regarding these proposed evidence-based updates and has no comments at this time.	Karen Sims, Assistant Claims Operations Manager State Compensation Insurance Fund July 17, 2018 Written Comment	Agree: Stakeholder comments are invaluable to the rulemaking process.	None.
General Comment	Commenter fully supports the Divisions' intent to incorporate by reference the most recent American College of Environmental Medicine's (ACOEM) treatment guidelines into the General Approaches and Special Topics (Traumatic Brain Injury Guideline) sections of the MTUS. Commenter agrees that by replacing outdated guidelines and updating with the most recent ACOEM treatment guidelines, it ensure medical treatment will be based on the latest scientific research and current standards of medical care.	Robert Goldberg, MD, FACOEM Chief Medical Officer, Senior Vice President Healthesystems, LLC July 17, 2018 Written Comment	Agree.	None.
General Comment	Commenter supports updates to the	Denise Niber	Agree.	None.

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9792.24.5	Medical Treatment Utilization Schedule (MTUS) that ensure that treatment for injured workers remains governed by evidence-based guidelines that are the most current available from ACOEM. Thus, the adoption of ACOEM's 2017 Traumatic Brain Injury Guideline is particularly appreciated.	Claims and Medical Director California Workers' Compensation Institute (CWCI) July 18, 2018 Written Comment		
9792.22	Commenter has the following recommendations: • Correct minor typographical error in the *Cornerstones of Disability Prevention and Management* heading on page 29 (*i.e.,* change Management to Management). • ACOEM's chapter *Cornerstones of Disability Prevention and Management* could be improved by the creation of decision trees or charts for specific injuries and conditions.	Denise Niber Claims and Medical Director California Workers' Compensation Institute (CWCI) July 18, 2018 Written Comment	Agree: This is a non-substantive typographical edit that the DWC relayed to the ReedGroup, publishers of the ACOEM guidelines. Agree: Commenter's suggestions regarding the decision trees or charts for specific injuries and conditions and sample questionnaires for the physician to administer at the commencement of treatment are good	The typographical spelling error on page 29 to the heading "Cornerstones of Disability Prevention and Management" has been corrected. None.

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	• ACOEM's chapter *General Approach to Initial Assessment and Documentation* could be improved by including a sample questionnaire for the physician to administer at the commencement of treatment. Such a questionnaire could serve as a guide for proper history-taking and documentation, as well as provide a window into the patient as a whole in order to better manage disability (using the biopsychosocial model).		suggestions. However, the ACOEM guidelines are copyrighted material published by the Reed Group. The DWC has forwarded these suggestions to the Reed Group for consideration. In addition, we encourage commenter to submit these suggestions directly. ACOEM accepts stakeholder input through the following web address: https://acoem.formstack.com/forms/stakeholderpatientinp	
9792.22	Commenter notes that revisions to the MTUS in 2009 created the current 8CCR Section 9792.22 in an effort to restructure the MTUS, making it easier to use and update. Commenter opines that the entire content of this Section only marginally complies with the enabling language of Labor Code Section 5207.27. That enabling language states the MTUS "shall address, at a minimum, the	Steve Cattolica Director of Governmental Relations AdvoCal July 18, 2018 Written Comment	Agree. Disagree: As Commenter indicated above, the General Approaches section of the MTUS has been in place since 2009. These updates merely replace the old, outdated	None. None.

EVIDENCE-BASED UPDATES TO THE MEDICAL TREATMENT FEE SCHEDULE	RULEMAKING COMMENTS 30 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	frequency, duration, intensity and appropriateness of the treatment procedures and modalities commonly performed in workers' compensation cases." Marginally, because if the phrase "at a minimum" did not appear, the content of this Section would likely not qualify as part of the Medical Treatment Utilization Schedule. Commenter opines that while it is true that initial assessment and documentation (of an injury) are very important, the Division provides no viable reason that proposed Section 9792.22(a)(2) should be given a presumption of correctness nor its content be elevated to a level requiring prior authorization. Commenter states that this Section's contents are "best practices," and somewhat analogous to "consensus" as the lowest rung of evidence - nothing more. The same is true of the other two updates to this Section and the new sub-section (a)(3)		guidelines with the latest ACOEM versions. The General Approaches guidelines are foundational guidelines containing evidence-based recommendations. These recommendations are standards of care when read by themselves, or if necessary, in conjunction with the corresponding Clinical Topics or Special Topics guideline. Disagree: See response provided on pages 4-7 above.	None.

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	"Approaches to Treatment." Commenter can see value in the guidance these updates and addition can provide to the community; however, he can also see the opportunity for delays and denials of payment based on a lack of authorization. Non-compliance with these "best practices," could become an artificial dividing line between "good" and "bad" providers without any means for the provider to overcome the ill-inherited "presumption."		Disagree: The General Approaches section incorporates foundational guidelines that are already and should be in the MTUS because they contain standards of care. For example, the Prevention Guideline contains ergonomic recommendations for the design of tasks that involve use of the back to prevent musculoskeletal disorders and injuries. The Cornerstones of Disability Prevention and Management Guideline contains recommendations and factors to consider in order to recognize when recovery and rehabilitation has stalled. The General Approach to Initial Assessment and Documentation Guideline contains recommended summary measures of exposure (or tools) providing	None.

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			lines of query for history taking to ascertain and document work-relatedness of disorders. All of these examples are evidence-based recommendations properly cited with supporting studies. These recommendations are standards of care when read by themselves, or if necessary, in conjunction with the corresponding Clinical Topics or Special Topics guideline.	
	Commenter recommends the following revised language to 9792.22(a): The Administrative Director adopts and incorporates be reference into the MTUS specific guidelines set forth below from the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines (ACOEM Practice Guidelines) *as recommendations, without a presumption of correctness or any requirement for pre-*		Disagree: As mentioned above, the proposed General Approaches guideline updates contain evidence-based recommendations, peer-reviewed, nationally recognized standards of care. When read by themselves, or if necessary, in conjunction with the corresponding Clinical Topics or Special Topics guidelines, they contain recommendations that are presumed correct.	None.

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	authorization. Commenter states that historically the industrial medicine treatment guidelines have been misapplied by the employer community and their representatives. Regardless of the rhetoric, "guidelines" have not been implemented as "guidelines" but as hard and fast rules. Commenter strongly recommends the implementation of this proposed revised language.		Disagree: See above response pages 17 and 18. In addition, this comment goes beyond the scope of this rulemaking. Commenter is concerned with the "implementation" of these guidelines as "hard and fast rules." Review of a treating physician's Request For Authorization or RFA is done by Utilization Review or Independent Medical Review covered in Title 8, California Code of Regulations, section 9792 *et seq.* and is not covered by these proposed regulations.	None.
9792.24.5 – Traumatic Brain Injury Guidelines	Commenter would like to emphasize the Division's obligation to assure that the implementation of this new section/guideline places the injured worker alone as the priority when traumatic brain injury (TBI) has been diagnosed. Commenter is concerned that the employer community's heavy-handed application of treatment	Steve Cattolica Director of Governmental Relations AdvoCal July 18, 2018 Written Comment	Disagree: Although the DWC certainly prioritizes the effect the proposed TBI guideline, and all the MTUS guidelines for that matter, have on injured workers, the DWC's top priority is to make sure our proposed regulations fall within the scope of the	None.

EVIDENCE-BASED UPDATES TO THE MEDICAL TREATMENT FEE SCHEDULE	RULEMAKING COMMENTS 30 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	guidelines has become the source of real harm to some injured workers, sometime even resulting in death. Commenter notes that these cases often present complications at the fringe of medical science and technology. He opines that if the TBI treatment "guidelines" are allowed to be applied as many guidelines have been in the past, the result is likely to be an even more catastrophic outcome. Collaboration, not cost controls, must be the primary focus. The expedited status of a request for authorization when TBI is involved should always be assumed; the presumption of correctness of a modality, justified only by consensus, cannot be allowed to stand obstinately in the way of a well-substantiated - if also consensus based - alternative.		statutory authority provided in Labor Code sections 5307.27, 4600, and 4604.5. Also, see response on page 19. Disagree: Goes beyond the scope of this rulemaking. Commenter is concerned with how the "TBI treatment guidelines are allowed to be applied." As mentioned in the response found in page 19, review of a treating physician's Request For Authorization or RFA is done by Utilization Review or Independent Medical Review covered in Title 8, California Code of Regulations, section 9792 *et seq.* Again, this comment goes beyond the scope of this rulemaking. Competing recommendations substantiated only by consensus evidence will be independently evaluated by either the UR or IMR reviewing physician applying	None.

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	Commenter recommends that the Division to take its time to assure that 8CCR Section 9792.24.5 does not simply provide a new set of guidelines, but that implementing them sets a new standard for the application of all treatment guidelines by employers and medical providers alike.		the MTUS Methodology for Evaluating Medical Evidence (section 9792.25.1). Agree.	None.