

Medical Treatment Utilization Schedule	RULEMAKING COMMENTS 3RD 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
General Comment	<p>Commenter is concerned that the “requirement that treating physicians provide a copy of the entire study or relevant sections of the guideline containing the recommendation that the physician believes guides the reasonableness and necessity of the requested treatment when they are attempting to rebut the MTUS’ presumption of correctness” is onerous and would likely prevent many physicians from requesting treatment that falls outside of the MTUS. However, if this requirement is enacted, commenter strongly suggests that physicians be compensated for both research time and any cost to obtain the studies.</p> <p>Commenter opines that the MTUS should not be the sole determination of clinically appropriate treatment. “Evidence based medicine is the integration of best research evidence with clinical expertise and patient values” according to Dr. David Sacket, widely credited as the “father” of evidence-based medicine. Commenter states that he correctly states that, “Without clinical expertise,</p>	<p>Jay Shery, MD Department of Insurance and Industrial Relations Chair</p> <p>Moses Jacob, MD Workers’ Compensation Committee Chair California Chiropractic Association January 13, 2015 Written Comment</p>	<p>Reject: If a treating physician is attempting to rebut the MTUS, it is reasonable to assume that he or she has read the relevant sections of the guideline or the study being relied upon to rebut the MTUS. Therefore, this requirement would not cost the treating physician any more than the cost of making a copy of something he or she presumably already read. Note there is nothing in these regulations that preclude an electronic copy.</p> <p>Agree. Accept.</p>	<p>None.</p> <p>None.</p>

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	<p>practice risks becoming tyrannized by evidence, for even excellent external evidence may be inapplicable to or inappropriate for an individual patient. Without current best evidence, practice risks becoming rapidly out of date, to the detriment of patients.”</p> <p>Commenter proposes that when a patient continues to make progress as demonstrated by functional improvement, symptomatic relief and increased or sustained ability to perform activities of daily living (ADL), that this should be regarded as sufficient for overcoming the MTUS presumption. Commenter opines that it makes little sense to deny care that is demonstrably effective simply because it does not comport with the narrow limits of a guideline. This is precisely the “tyranny” decried by Dr. Sackett which denies effective care and drives up costs as patients are forced to seek ever more invasive or toxic treatments.</p> <p>Commenter opines that when discussing chronic pain patients, the issue should not be whether additional</p>		<p>Reject: The standard for rebutting the MTUS’ presumption of correctness is clearly articulated in Labor Code section 4604.5 which requires a preponderance of the scientific medical evidence establishing that a variance from the guidelines is reasonably required to cure or relieve the injured worker. Therefore, that is the standard that we are statutorily obligated to follow. However, these proposed regulations allow for approvals in section 9792.21.1(e).</p> <p>Reject: Goes beyond the scope of the Third 15-day comment period because no changes</p>	<p>None.</p> <p>None.</p>

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	<p>functional improvement or improved ability to perform ADL can be demonstrated. By definition, chronic pain patients have achieved a therapeutic plateau, meaning further functional gains are not anticipated.</p> <p><u>The goals of chronic pain management</u> are different than acute pain management once that patient has reached a plateau in care. The goals of ongoing care (exacerbations and/or scheduled chronic care for those who fail to maintain functional gains and decline in the absence of care) are primarily four-fold:</p> <ol style="list-style-type: none"> 1. Minimize or control pain 2. Keep the patient as functional as possible 3. Minimize reliance on drugs 4. Keep the patient working when possible <p>Commenter states that some chronic pain patients require no intervention at all and most can manage without professional intervention whatsoever, using home care, exercises and over-the-counter medication. Some require periodic intervention, such as an</p>		<p>were made in the Third 15-day comment period to the definition of “Chronic Pain” that had not already been posted and reviewed during the previous comment periods.</p>	

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	<p>occasional short series of treatment like chiropractic or physical therapy for episodic flare-ups where their usual self-directed management strategies fail to maintain their pain level or functional level. Some will require ongoing care, and would require additional documentation and trials of therapeutic withdrawal to support such a level of care.</p> <p>Commenter strongly encourages the Division of Workers' Compensation (DWC) to adopt the current version of the Official Disability Guidelines (ODG). As currently proposed, the commenter opines that the Division would have doctors shuffling back and forth between different guidelines to justify care. Commenter states that ACOEM is long outdated and has no real mechanism for timely updates, whereas ODG is continually updated based on new information or research.</p>		<p>Reject: Assuming the DWC adopts just ODG our regulations cannot preclude a physician from finding the best available evidence from other medical guidelines or peer-reviewed studies. Physicians would still be "shuffling back and forth between different guidelines to justify care." ODG is a reputable guideline but the DWC will continue to take the patch-work approach in choosing the guidelines incorporated into the MTUS.</p>	<p>None.</p>
<p>9792.21.1(b)(1)(B) (1) – (2)</p>	<p>Commenter notes that subdivision (b)(1)(B) is amended in this version of the regulations to set forth the</p>	<p>Diane Worley California Applicants'</p>		

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	<p>following additional requirements that shall be provided by the treating physician if they are attempting to rebut the MTUS' presumption of correctness: "a clear and concise statement that the MTUS' presumption of correctness is being challenged" and "a copy of the entire study or the relevant sections of the guideline" containing the recommendation the treating physician believes guides the reasonableness and necessity of the requested treatment that is applicable to the injured worker's medical condition or injury.</p> <p>Consistent with this change, subdivision (b)(1)(B)1 is amended to add the phrase "and copy of the study or copy of the relevant sections of the guideline" to make clear that treating physicians shall provide this if they are attempting to rebut the MTUS' presumption of correctness.</p> <p>Subdivision (b)(1)(B)2 is amended to add the phrase "a copy of the additional study(ies) or copy of the additional relevant sections of the guideline(s) " to make clear that</p>	<p>Attorneys Association (CAAA) January 13, 2014 Written Comment</p>		

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	<p>treating physicians shall provide this if they are attempting to rebut the MTUS' presumption of correctness and have provided more than one citation.</p> <p>Commenter generally supports the concept of a treating physician <i>citing</i> a guideline or study in the RFA in rebuttal to the MTUS/ODG; however, commenter opines that requiring the requesting physician to also provide a copy of the rebuttal guideline or study is both economically unreasonable and unnecessary for the following reasons:</p> <p>First, Labor Code Section 4604.5 simply requires "a preponderance of scientific medical evidence establishing that a variance from the guidelines reasonably is required to cure or relieve" the injured worker. Commenter states that there is simply no support in this section for the proposition that the requesting physician provide actual copies of the works cited, particularly before there is even a dispute concerning the request.</p>		<p>Reject: If a treating physician is attempting to rebut the MTUS, it is reasonable to assume that he or she has read the relevant sections of the guideline or the study being relied upon to rebut the MTUS. Therefore, this requirement would not cost the treating physician any more than the cost of making a copy of something he or she presumably already read.</p>	<p>None.</p>

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	<p>relieve from the effects of the injury. Commenter opines that placing further mandates on treating physicians to provide specific documentation with their RFAs without reimbursement for the cost could result in injured workers not getting medical treatment needed to recover from their injuries.</p> <p>In addition to the forgoing, we also believe the requirement of providing additional documentation will have a greater impact on smaller medical practices which do not have the resources needed to comply with the proposed MTUS changes or to absorb the unreimbursed costs.</p> <p>Commenter states that under the current fee schedule treating physicians are not paid for doing the work required to properly support an RFA that is in rebuttal to the MTUS. Commenter states that placing a requirement that "a copy of the entire study or the relevant sections of the guideline" containing the recommendation supporting the requested treatment be attached to the RFA, should require a reasonable</p>		<p>presumably already read. In addition, nothing in these regulations precludes an electronic copy.</p> <p>See previous response.</p> <p>See previous response.</p>	<p>None.</p> <p>None.</p>

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	<p>reimbursement method for producing this evidence. Commenter opines that to do otherwise, places an untenable burden on doctors and on injured workers who can't get necessary treatment without it.</p> <p>Commenter requests that the Division consider, at the earliest possible time, recommended amendments to the physician fee schedule to provide a reasonable payment for preparation of the RFA and supporting documentation.</p> <p>Commenter opines that the net impact would be a savings for the system as it will facilitate compliance with the requirements of this new section. With an increase in properly supported RFAs it would reduce the number of treatment requests that go through the dispute resolution process. This will reduce costs for employers and insurance carriers, facilitate delivery of appropriate and expeditious medical treatment to injured workers, and shorten time off work for an injury. Commenter requests that her request for reconsideration of the</p>		<p>See previous response.</p> <p>See previous response.</p>	<p>None.</p> <p>None.</p>

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	<p>physician fee schedule be considered to ensure compliance with the MTUS regulations.</p> <p>Commenter recommends that subdivision (b) (1)(B) be amended to delete the word “entire” before “study” in subparagraph(B), and insert “relevant sections of the”, so it now reads “<u>and a copy of the relevant sections of the study or the relevant sections of the guideline containing the recommendation</u>”</p> <p>Commenter notes that a study could be hundreds of pages, whereas the relevant section supporting the treatment request could be two or three pages. Commenter opines that this section as currently written imposes an unnecessary burden on the treating physician to copy an entire study, where only a relevant section from the study may be necessary. As a citation to the study is still required to be provided by the treating physician, the reviewer will have access to the entire study, or can request further documentation from the treating physician if needed.</p>		See previous response.	None.

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	<p>Commenter recommends that subdivision (b) (2) and (3) also be amended to require the Utilization Review Physician and Independent Medical Review Physician to provide <u>“a copy of the relevant sections of the study or the relevant sections of the guideline containing the recommendation”</u> in addition to the citation to the guideline or study containing the recommendation that supports the reasonableness and necessity of the requested treatment that is applicable to the injured worker’s medical condition or injury, since the disputing party - the claims administrator - should bear the cost of the dispute. Commenter opines that there is no rationale for not requiring the UR and IMR Reviewer to provide the same supporting documentation to modify, delay, or deny the treatment request as the treating physician is now required to provide when they request the treatment. In the alternative, if commenters suggested revision to subdivision (b) (1)(B) is not made, then the UR and IMR reviewer should be required to provide <u>“a copy of the entire study or the</u></p>		<p>Reject: The MTUS constitutes the standard for the provision of medical care in accordance with Labor Code section 4600(b). If the MTUS applies, then the recommendation in the MTUS is presumed correct and the treatment shall be approved by the reviewing physician. Neither the Utilization Review physician nor the Independent Medical Review physician will be attempting to rebut the MTUS if it applies to the injured workers medical condition or injury. Therefore, treating physicians would be the ones attempting to rebut the MTUS’ presumption of correctness and, therefore, need to provide a copy of the relevant sections of the guideline or a copy of the entire study to meet the burden of proof.</p>	<p>None.</p>

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	<p><u>relevant sections of the guideline containing the recommendation</u> “ to be consistent with what the treating physician must provide.</p>			
9792.21.1(b)(1)	<p>Commenter recommends the following revised language:</p> <p>(1) <u>Treating Physicians–Treatment</u></p> <p>(A) If <u>the treating physician believes</u> the medical condition or injury is not addressed by the MTUS, then the treating physician <u>may shall</u> provide in the Request for Authorization (RFA) or in an attachment to the RFA a citation to the guideline <u>recommendation or and to the supporting study containing the recommendation he or she believes guides the reasonableness and necessity of the requested treatment</u> that is applicable to the injured worker’s medical condition or injury <u>and the requested treatment</u>.</p> <p>1. The citation provided by the</p>	<p>Brenda Ramirez Claims & Medical Director California Workers’ Compensation Institute (CWCI) January 13, 2015 Written Comment</p>	<p><u>Reject: Replacing the phrase “Treating Physicians” with the word “Treatment” is too broad and fails to specify which physician is required to apply subsequent steps.</u></p> <p><u>Reject: Here, commenter specifies “the treating physician” but Labor Code section 4604.5 only places the burden of proof on the treating physician if he/she is attempting to rebut the MTUS’ presumption of correctness. A similar burden is not placed on the treating physician if he/she is seeking treatment not addressed by the MTUS.</u></p>	<p><u>None.</u></p> <p><u>None.</u></p>

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	<p>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 <u>and the requested treatment</u>.</p> <p>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 <u>additional guideline recommendation or supporting</u> 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 <u>and the requested treatment</u> but is not addressed by the primary source cited.</p> <p>(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</p>		<p><u>Hence the use of the word “may” instead of “shall”. The use of the conjunction “or” is accurate and should not be replaced with “and” because a citation can be either to a recommendation or to a supporting study. Commenter’s recommendation appears to require both. Commenter’s suggested deletions of the phrases that relate to “containing the recommendation he or she believes guides the reasonableness and necessity of the requested treatment” is rejected because those phrases add necessary details to make this regulation clear and more accurate. The phrase “and the requested treatment” is unnecessary because it is subsumed in the preferred comprehensive phrase “the injured worker’s medical condition or injury.”</u></p>	

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	<p>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 <u>recommendation and to the supporting or study containing the recommendation</u> he or she believes <u>guides the reasonableness and necessity of the requested treatment</u> that is applicable to the injured worker’s medical condition or injury <u>and the requested treatment</u>; and a copy of the entire <u>supporting</u> study or the relevant sections of the guideline containing the recommendation he or she believes <u>guides the reasonableness and necessity of the requested treatment</u> <u>rebutts the MTUS presumption of correctness</u> that is applicable to the injured worker’s medical condition or injury.</p> <p>1. The citation and copy of the <u>supporting</u> 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 <u>contains the recommendation that</u></p>		<p><u>Reject: The use of the conjunction “or” is accurate and should not be replaced with “and” because a citation can be either to a recommendation or to a supporting study. Commenter’s suggested deletions of the phrases that relate to “containing the recommendation he or she believes guides the reasonableness and necessity of the requested treatment” is rejected because those phrases add necessary details to make this regulation clear and more accurate. We prefer the use of this language rather than commenter’s recommended use of the phrase “rebutts the MTUS presumption of correctness” because our language is consistently used throughout this section and in</u></p>	<p><u>None.</u></p>

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	<p>guides the reasonableness and necessity of the requested treatment that is applicable to the injured worker's medical condition or injury <u>and the requested treatment.</u></p> <p>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 <u>additional</u> 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 <u>and the requested treatment</u> but is not addressed by the primary source cited.</p> <p>Commenter states that 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</p>		<p><u>this context, bears the same meaning as commenter's suggested language. The phrase "and the requested treatment" is unnecessary because it is subsumed in the preferred comprehensive phrase "the injured worker's medical condition or injury." Adding the word "additional" in the location suggested by commenter is unnecessary. It is already clear in the context of the sentence which already uses the word "additional" three times.</u></p>	

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	<p>to review its appropriateness, therefore it is necessary to replace the “may” with “shall” in (b)(1)(A).</p> <p>Commenter recommends 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. Commenter recommends 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.</p> <p>Commenter 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:</p>			

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	<p>“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.”</p> <p>Commenter states that 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.</p> <p>Commenters other recommended changes to (b)(1) are suggested to improve flow and clarity.</p>		<p>Reject: Labor Code section 4604.5 only places the burden of proof on the treating physician if he/she is attempting to rebut the MTUS’ presumption of correctness. A similar burden is not place on the treating physician if he/she is seeking treatment not addressed by the MTUS.</p> <p>Reject: Commenter’s suggested deletions are</p>	<p>None.</p> <p>None.</p>

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			<p>rejected because the phrase “containing the recommendation he or she believes guides the reasonableness and necessity of the requested treatment” adds necessary details to make this regulation clear and more accurate.</p> <p>Reject: The phrase “requested treatment” is already included.</p> <p>Reject: Labor Code section 4604.5 only places the burden of proof on the treating physician if he/she is attempting to rebut the MTUS’ presumption of correctness. A similar burden is not placed on the treating physician if he/she is seeking treatment not addressed by the MTUS. In addition, pursuant to Labor Code section 4600, employers are obligated to provide reasonable and necessary medical treatment to cure and relieve the injured worker from</p>	<p>None.</p> <p>None.</p>

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			<p>the effects of his/her injury. Therefore, DWC is concerned that if we adopt commenter's suggestion, then a request for authorization may be denied by a reviewing physician because of a procedural defect without determining whether or not the requested treatment was reasonable and necessary.</p> <p>Reject: Peer-reviewed studies certainly contain findings, conclusions and or recommendations that can be applied by physicians.</p> <p>Reject: Disagree commenters other recommended suggestions improve flow and clarity.</p>	<p>None.</p> <p>None.</p>
9792.21.1(b)(2)	<p>Commenter recommends the following revised language:</p> <p>(2) Utilization Review Physicians</p> <p>(A) If the RFA is being modified, delayed or denied, then the Utilization Review physician shall provide in the</p>	<p>Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) January 13, 2015 Written Comment</p>		

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	<p>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.</p> <p>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.</p> <p>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</p>			
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	<p>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.</p> <p>Commenter states that the proposed language in (b)(2) that limits the requirement to the UR physician is in conflict with section 9792.9.1(e)(5) which states that:</p> <p>“the decision shall be signed by either the claims administrator or the reviewer.”</p> <p>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, commenter recommends removing the requirement for only the Utilization Review physician to do so.</p> <p>Commenter states that if the Administrative Director accepts the preceding recommendation, the heading for (b)(2) should be revised to</p>		<p>Reject: The proposed language in section 9792.21.1(b)(2)(A) is not in conflict with section 9792.9.1(e)(5). The analysis and review shall be performed by the reviewing physician but the Utilization Review decision can be signed by reviewing physicians or the claims adjuster. These proposed regulations pertain to the analysis and review of the Utilization Review physician.</p> <p>Reject: The DWC rejected the preceding recommendation because (b)(2) only pertains to the analysis and review of the</p>	<p>None.</p> <p>None.</p>

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	<p>“Utilization Review” since (b)(2) does not pertain only to the Utilization Review Physician. And for consistency, commenter suggests also revising the heading for (b)(1) to “Treatment,” and the heading for (b)(3) to “Independent Medical Review.”</p> <p>Commenter states that because section 9792.9.1(e)(5)(F) already requires the written decision modifying, delaying or denying treatment authorization to include:</p> <p>“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,”</p> <p>it is necessary only to add language expressly requiring the citation to be included.</p> <p>Commenters other recommended changes to (b)(2) are suggested to</p>		<p>Utilization Review physician.</p> <p>Reject: Section 9792.21.1(b)(2) is consistent with section 9792.9.1(e)(5)(F) because it is “a description of the relevant medical criteria or guidelines used to reach the decision” is also a part of the “clear, concise, and appropriate explanation of the reasons for the reviewing physician’s decision.”</p> <p>Reject: Disagree commenters other recommended suggestions improve flow and clarity.</p>	<p>None.</p> <p>None.</p>

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9792.21.1(b)(3)	<p>improve flow and clarity.</p> <p>Commenter recommends the following revised language:</p> <p>(3) Independent Medical Review Physicians</p> <p>(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 <u>determined</u> applicable to the injured worker's medical condition or injury.</p> <p>1. The citation provided by the Independent Medical Review physician shall be the primary source he or she relied upon which contains</p>	Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) January 13, 2015 Written Comment	<p>Reject: The proposed regulations provide specific instruction to Independent Medical Review physicians. The word "Physicians" is necessary for clarity.</p> <p>Accept: Agree this is a typographical error.</p> <p>Reject: Commenter's suggested deletions are rejected because the phrase "containing the recommendation that guides the reasonableness and necessity of the requested treatment" adds necessary details to make this regulation clear and more accurate.</p>	<p>None.</p> <p>Section 9792.21.1(b)(3)(A) is revised to state "worker's" instead of "workers'" to correct a non-substantial typographical error.</p> <p>None.</p>

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	<p>the recommendation that guides the reasonableness and necessity of the requested treatment that is applicable to the injured worker’s medical condition or injury.</p> <p>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.</p> <p>Commenters recommended changes to (b)(3) are suggested to improve flow and clarity.</p>		<p>Reject: Use of the word “provides” is clearer than using the phrase “relied upon” in the context of this provision.</p> <p>Reject: Commenter’s suggested deletions are rejected because the phrase “guides the reasonableness and necessity of the requested treatment” adds necessary details to make this regulation clear and more accurate.</p> <p>Reject: Disagree commenters other recommended suggestions improve flow and clarity.</p>	<p>None.</p> <p>None.</p> <p>None.</p>
9792.21.1(c)	<p>Commenter recommends the following revised language:</p> <p>(c) If the treating physician and/or the Utilization Review physician and/or the Independent Medical Review</p>	Brenda Ramirez Claims & Medical Director California Workers’ Compensation Institute (CWCI)	Reject: Disagree that these proposed regulations give the IMR reviewer “authority to propose a treatment recommendation of his or her own.” No treatment request is	None.

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	<p>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.</p> <p>Commenter states that the IMR reviewer must resolve the dispute by appropriately determining which of the two recommendations is supported by the best evidence. Commenter states that the IMR reviewer lacks the authority to propose a treatment recommendation of his or her own.</p>	<p>January 13, 2015 Written Comment</p>	<p>being proposed by the IMR reviewer. However, an IMR physician can provide the necessary citation(s) that support if a treatment request is reasonably required to cure or relieve the effects of an injured worker's injury or condition.</p> <p>Reject: A treating physician does not need to provide a citation unless he or she is attempting to rebut the MTUS' presumption of correctness. If a UR physician denies, delays or modifies a RFA, upon IMR review, an IMR physician can provide the necessary citation(s) that support if a treatment request is reasonably required to cure or relieve the effects of an injured worker's injury or condition.</p>	<p>None.</p>
<p>General comment</p>	<p>Commenter states that the level of authority that MTUS holds over the medical treatment rendered on behalf of all injured workers' in the State of California mandates that the Division of Workers' Compensation (DWC)</p>	<p>Lawrence Cate January 13, 2015 Written Comment</p>	<p>Reject: Goes beyond the scope of the Third 15-day comment period because this comment is a general statement about the DWC and requests that "the State of California and the</p>	<p>None.</p>

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	<p>demonstrate a commensurate level of effort and responsibility in maintaining MTUS. This duty is underscored by the fact that MTUS is also the sole standard for resolving disputes within IMR. Commenter states that since implementing MTUS, the DWC has continued to delegate its responsibilities to define and distill the Evidence-Based Medicine (EBM) used to decide the appropriate path for medical treatment for injured workers, as well to resolve disputes in that treatment, to entities that operate without transparency and a high level of accountability to the public through the DWC. Commenter opines that this transfer of power and duty has resulted in increased ambiguity in treatment disputes between payers and medical providers, which subsequently has increased litigation expenses, administrative overhead, and delays in treatment for injured workers.</p> <p>Commenter requests that the State of California and the DWC increase its will and/or funding to restore the necessary resources to the DWC to</p>		<p>DWC increase its will and/or funding to restore the necessary resources to the DWC to protect the rights of injured workers and the mandated path of timely and appropriate medical treatment.”</p> <p>Reject: The DWC, with the assistance of the MEEAC, will continue to evaluate the existing medical literature on a given topic and choose the guideline or study that provides the most effective treatment for work related injuries or conditions that is supported by the best available evidence.</p> <p>Reject: MEEAC is the group of physicians that provide advisory recommendations to the DWC’s executive medical director on matters concerning the MTUS. No contracted agents provide the DWC with consulting, maintenance, or issuing decisions on disputes</p>	<p>None.</p> <p>None.</p>

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	<p>protect the rights of injured workers and the mandated path of timely and appropriate medical treatment, including:</p> <ul style="list-style-type: none"> • Maintenance of MTUS as an independent and contemporary standard overseen by MEEAC and the AD. • Increased level of oversight by the DWC on contracted agents involved with MTUS for the purpose of consulting (i.e. ODG), maintenance, or issuing decisions on disputes (i.e. Maximus), with an eye on reporting/resolving any possible biases and ensuring consistency. 		<p>on matters concerning the MTUS.</p> <p>Reject: Maximus is a contracted agent that issues decisions on disputes on IMR issues but this comment goes beyond the scope of these regulations.</p>	None.
9792.21.1(a)(2)(A)	<p>Commenter is questioning the Division's requirement that if the medical treatment is not addressed in the MTUS, that the treating physician, as a second step, would be required to consult either the ACOEM or ODG guidelines to determine whether they contain a guideline applicable to the medical condition or injury.</p> <p>Commenter states that while the</p>	Lesley Anderson, MD, Chair Workers' Compensation Committee California Orthopaedic Association (COA) January 13, 2015	Reject: Goes beyond the scope of the Third 15-day comment period because no changes were made in the Third 15-day comment period version that had not already been posted and reviewed during the previous comment periods. In addition, the DWC specifically choose ACOEM and ODG as the sources for the second step	None.

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	<p>ACOEM and ODG are well respected and nationally-recognized treatment guidelines and that COA often works with these entities to expand and update their guidelines when there is an opportunity, she does not see where the Labor Code gives the ACOEM or ODG guidelines preferential treatment over any other nationally-recognized treatment guideline. Commenter opines that this second step, before the treating physician could consult other nationally-recognized treatment guidelines, is unnecessary. It also requires treating physicians to subscribe to these proprietary treatment guidelines which adds to their overhead costs.</p> <p>Commenter opines that if the treatment is not addressed in the MTUS, the treating physician should be able to consult any other nationally-recognized treatment guideline without first consulting ACOEM or ODG.</p> <p>Commenter recommends that this subsection be deleted based on lack of statutory authority of the Division to</p>		<p>of the Medical Evidence Search Sequence because treating physicians, reviewing physicians, claims adjuster and other members of the public involved in workers' compensation already have extensive experience with both guidelines. Currently, the MTUS has incorporated the following guideline chapters from ACOEM: Neck and upper back; shoulder, elbow disorders; forearm, wrists, and hand; low back; knee; ankle and foot; stress related conditions and eye. Currently, the MTUS has incorporated the Chronic Pain treatment guidelines from ODG. ODG has agreed to allow the DWC to post the Chronic Pain treatment guideline on our website free-of-charge. ACOEM has not agreed to the same arrangement but as stated above, the MTUS already contains many body part chapters adopted from ACOEM that is currently</p>	

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	require treating physicians to consult the ACOEM and ODG guidelines as a secondary treatment guideline before consulting other nationally-recognized treatment guidelines.		being applied by members of the public.	
9792.21.1(b)(1)(B)	<p>Commenter supports the Division’s attempt to provide high standards for any treating physician that is rebutting the MTUS presumption of correctness. Commenter agrees that it is reasonable to expect the treating physician who is rebutting the MTUS guidelines to provide a citation to the guideline or study that they believe is more applicable to the particular medical condition or injury under consideration.</p> <p>Commenter opines that it is unreasonable for the Division to require the treating physician to provide an entire copy of the study when they are citing a Level 1 or Level 2 study. Level 1 or Level 2 research meets the Division’s measure of high level peer-reviewed medical research; and, commenter opines that providing only the citation should be sufficient. Commenter states that it is overly and needlessly burdensome and</p>	<p>Lesley Anderson, MD, Chair Workers’ Compensation Committee California Orthopaedic Association (COA) January 13, 2015</p>	<p>Accept. Agree.</p> <p>Reject: If a treating physician is attempting to rebut the MTUS, it is reasonable to assume that he or she has read the relevant sections of the guideline or the study being relied upon to rebut the MTUS. Therefore, this requirement would not cost the treating physician any more than the cost of making a copy of something he or she</p>	<p>None.</p> <p>None.</p>

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	<p>costly on the treating physician to require that they submit a copy of the entire study in these cases.</p> <p>Commenter recommends that this subsection be amended to clarify that when the treating physician is rebutting the MTUS guidelines by citing either a Level 1 or Level 2 nationally-recognized study, that only the citation of the study would be required.</p>		presumably already read. In addition, nothing in these regulations precludes an electronic copy.	
9792.21.1	<p>Commenter notes that this subdivision suggests treating physicians <i>may</i> provide in the Request for Authorization (RFA) or in an attachment to the RFA a citation to the guideline 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, if the medical condition or injury is not addressed by the MTUS.</p> <p>Commenter recommends that “<i>may</i> provide” be changed to “shall provide”. Commenter opines that the burden of proof should be on the</p>	<p>Peggy Thill Claims Operations Manager</p> <p>Dinesh Govindarao, MD, MPH, Chief Medical Officer State Compensation Insurance Fund January 13, 2015 Written Comment</p>	Reject: Labor Code section 4604.5 only places the burden of proof on the treating physician if he/she is attempting to rebut the MTUS’ presumption of correctness. A similar burden is not place on the treating physician if he/she is seeking treatment not addressed by the MTUS.	None.

Medical Treatment Utilization Schedule	RULEMAKING COMMENTS 3 RD 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
General comment	<p>treating physician.</p> <p>Commenter opines that the current revised version, while improved relative to both the original and second proposals, still suffers from significant flaws.</p> <p>Commenter states that adoption of the current proposal would create significant problems within the workers compensation system in California.</p> <p>The following are the commenter's most issues with the proposed MTUS:</p> <ol style="list-style-type: none"> 1) Inconsistent with, and violates, California Labor Code 4604.5(a) 2) Internally inconsistent, and inconsistent with the principles of evidence-based medicine 3) Highly probable to result in very significant cost increases to California employers 4) Highly probable to result in significant increases in delays of delivery of medical treatment 5) Creates new, unanticipated and potentially serious risks of significant harm to injured workers 	Robert Ward January 13, 2015 Written Comment		

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	<p>6) Creates a laborious and broadly applied solution to address a potential problem of entirely unknown scope and impact.</p> <p>1) Inconsistent with, and violates, California Labor Code 4604.5(a)</p> <p>LC4604.5(a) explicitly establishes that the MTUS has a rebuttable presumption of correctness on issues of medical necessity. Commenter states that the current MTUS proposal sets aside this requirement. While proposed 9792.21.1(d)(2) states that "the treating physician who seeks treatment outside of the MTUS bears the burden of rebutting the MTUS' presumption of correctness", the process described in the current proposal draft fails to comply with this requirement.</p> <p>Commenter states that under the currently proposed process, in any instance where the requesting physician indicates an intent to rebut the MTUS, the UR physician or IMR physician is required to immediately abandon the recommendation of the</p>		<p>Reject: Disagree that these proposed regulations violate Labor Code section 4604.5(a). When a treating physician is attempting to rebut the MTUS' presumption of correctness he or she is required to 1) provide a citation(s) to provide a clear statement that the MTUS' presumption of correctness is being challenged 2) provide a citation to the guideline or study containing the recommendation he or she believes guides the reasonableness and necessity of the requested treatment, and 3) provide a copy of the relevant sections of the guideline or the entire study that he or she believes guides medical care.</p> <p>Reject: Commenter's interpretation that the UR or IMR physician "...is required to immediately abandon the recommendation of the MTUS" whenever a treating physician provides a citation is</p>	<p>None.</p> <p>None.</p>

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	<p>MTUS; and to instead seek evidence as per proposed 9792.25.1; and rely on the recommendations of a single publication rather than the MTUS. This is not a process for rebuttal of the presumption of correctness; but is actually an a priori abandonment of the presumption prior to any assessment of the evidence provided by the requesting physician.</p> <p>Commenter opines that unless and until this issue corrected, it is doubtful that the proposed process would withstand judicial scrutiny.</p> <p>4604.5. (a) The recommended guidelines set forth in the medical treatment utilization schedule adopted by the administrative director pursuant to Section 5307.27 shall be presumptively correct on the issue of extent and scope of medical treatment. The presumption is rebuttable and may be controverted by a preponderance of the scientific medical evidence establishing that a variance from the guidelines reasonably is required to cure or relieve the injured worker from the</p>		<p>incorrect. The UR or IMR physician is required to apply the MTUS Methodology for Evaluating Medical Evidence only when there are competing recommendations. A fundamental concept of evidence-based medicine is that the best available evidence is used to guide clinical decisions. Therefore, a system must be in place to evaluate medical evidence in order to determine the quality and strength of evidence used to support the recommendations for a medical condition or injury.</p> <p>Reject: Commenter's statement that the proposed</p>	<p>None.</p>

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	<p>effects of his or her injury. The presumption created is one affecting the burden of proof.</p> <p>2) Internally inconsistent, and inconsistent with the principles of evidence-based medicine</p> <p>Commenter notes that it is the intention of the authors of the proposed MTUS that physicians would seek evidence in the following order of preference, and make determinations consistent with the recommendations (applicable to the injured worker's condition and the medical treatment under consideration), consistent with the following ordered source hierarchy:</p> <p>A) MTUS B) Most recent version of ACOEM or ODG C) Most recent version of other nationally recognized evidence-based medical treatment guidelines D) Current peer-reviewed, scientifically-based publications</p> <p>This intention of the authors is codified in proposed 9792.21(d)(1).</p>		<p>regulation “requires that the reviewing physician abandon the guideline recommendation in favor of a single publication from the guideline bibliography” is incorrect. The MTUS Methodology for Evaluating Medical Evidence set forth in section 9792.25.1(a) states, “This methodology provides a process to evaluate studies, not guidelines” is misinterpreted by commenter. This same section goes on to state, “Therefore, the reviewing physician shall evaluate the underlying study or studies used to support a recommendation found in a guideline.” The guideline recommendation is not abandoned as commenter suggests, rather, the reviewer is required to evaluate the medical evidence supporting the recommendation. This is an example of the comprehensiveness of our proposed methodology which</p>	

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	<p>Commenter states that the proposed process as described in 9792.21.1 and 9792.25.1 does not operate in this manner.</p> <p>Commenter opines that the proposed process actually makes it entirely impossible for any reviewing physician to rely on an applicable recommendation from any guideline not adopted into the MTUS. This is because, upon finding an applicable recommendation in such a guideline, the reviewing physician is mandated to apply the process described in 9792.25.1; which in turn requires that the reviewing physician abandon the guideline recommendation in favor of a single publication from the guideline bibliography.</p> <p>In addition to being procedurally inconsistent, commenter states that the current process proposal is also inconsistent with the statement that the MTUS conforms with the principles of evidence-base medicine, as found in proposed 9792.21(b). Commenter states that the procedurally forced</p>		<p>allows a reviewing physician to evaluate the medical evidence supporting guideline recommendations with the medical evidence supporting a single study.</p> <p>Reject: See previous response.</p>	<p>None.</p>

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	<p>abandonment of a high-quality, consensus-based recommendation derived from a wide literature base in favor of a recommendation from a single publication is both unsupportable and antithetical to the principles of evidence-based medicine.</p> <p>3) Highly probable to result in very significant cost increases to California employers</p> <p>Commenter opines that the proposed process is very resource intensive. To evaluate, and document evaluation of, evidence as described in the proposed process would take a significant amount of time for each recommendation. For evaluation of treatment plans containing multiple services without MTUS recommendations; and/or instances where the treating physician has cited multiple references, this process can potentially add many hours of reviewer time to each utilization review and each independent medical review.</p>		<p>Reject: Disagree that these proposed regulations will result in very significant cost increases to California employers. Costs to California employers will not significantly increase because a similar systematic approach is already required pursuant to current section 9792.25(c)(1) which was adopted from ACOEM. These proposed regulations clarify this requirement and sets forth in detail the process that needs to be followed when there are competing recommendations. Although the medical evidence search sequence is introduced with these proposed regulations, by implication, the</p>	<p>None.</p>

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	<p>Commenter stats that most physicians are more entrepreneurial than altruistic, in that few will work for free. This means that UR physicians will need to be compensated for their time. As the cost of UR physician time increases, the overall cost of UR will increase to insurers/employers.</p> <p>Commenter states that as the cost of UR increases, there will be an increase in the number of treatment plans that will not be sent to UR, even if the claims administrator believes the treatment likely to be unnecessary. This is because there will be an actuarial determination that the probable cost of care is less than or equal to the more costly UR process. This type of decision-making will result in increases in medical treatment costs; and may result in increased iatrogenic illness.</p> <p>Insurers and employers will face a meaningful increase in overall costs. They will have to choose whether to bear those additional costs in UR; or in additional unnecessary medical treatment.</p>		<p>requirement to search for medical evidence already exists as well. For example, if a medical condition or injury is not addressed by the MTUS and the Utilization Review decision modifies, delays or denies the treating physician's Request for Authorization, the decision must be supported by medical evidence and a citation provided. It is implied, that the UR physician had to search for the medical evidence in order to come up with the citation. These proposed regulations merely provide guidance to a process that is already required.</p>	

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	<p>treatment of iatrogenic effects of treatment for the original industrial condition(s).</p> <p>Commenter states that many insurers are at this time readily accepting requests for authorization, even if the requesting provider has not followed required process. Examples include not using a DWC Form RFA; using an outdated Form RFA; or committing an error or omission in the completion and submission of the request for authorization. As the proposed MTUS process drives medical and review costs upward, insurers and employers will likely engage in efforts to cease accepting treatment plans in instances where the intent is clear, but the execution of the paperwork is flawed. This is a nearly cost-free alternative to actually rendering a decision on medical necessity, and in many instances will serve only to delay or prevent appropriate care.</p> <p>Commenter opines that in the event of an adverse determination via the UR process, if the same treatment is requested by the same provider within</p>		<p>Reject: See previous response regarding commenter's predictions of increased costs and the response provided.</p> <p>Reject: See previous response regarding commenter's predictions of increased costs and the response provided.</p>	<p>None.</p> <p>None.</p>

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	<p>12 months, and the documentation does not contain evidence of a material change in the case relevant to the reasons for the prior adverse determination, the insurer/employer is not required to take any "further action". Many insurers are not currently making use of this provision of LC4610. Among those that are, correspondence to the treating physician explaining why their request for authorization is not being reviewed is provided as a courtesy is common. As the proposed MTUS drives costs upward, the use of this process to make treatment unavailable to the injured worker for a period of 12 months will increase; and the frequency of communicating this outcome to injured workers and providers will decrease. This will become an attractive alternative to providing a determination of medical necessity.</p> <p>Commenter states that everyone who works in the California work comp system is aware of the many months of delays in determination and treatment arising from problems in the</p>		<p>Reject: These proposed regulations clarify a process that already exists. A systematic approach is already required pursuant to current</p>	<p>None.</p>

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	<p>IMR system during 2013 and 2014. In the event that Maximus attempts to comply with the MTUS proposal, it is very likely that they will be unable to keep pace with IMR volume, from the combined effects of the additional time required for completion and the attrition of their reviewer panel, as physicians reach the conclusion that the increased work load is not worth their time for the modest, fixed compensation offered.</p> <p>5) Creates new, unanticipated and potentially serious risks of significant harm to injured workers; mandates that injured workers become human subjects for experimental services</p> <p>Commenter opines that the event that a treating physician requests any experimental form of medical service, there will be no evidence other than the initial case studies or pilot studies. Under the proposed MTUS procedures, if the results of these studies are promising, then reviewing physicians would be required to deem the service as medically necessary. This will be true even in the absence</p>		<p>section 9792.25(c)(1) which was adopted from ACOEM. These proposed regulations set forth in detail the process that needs to be followed when competing recommendations are cited. Although the medical evidence search sequence is introduced with these proposed regulations, by implication, the requirement to search for medical evidence already exists as well. For example, if a medical condition or injury is not addressed by the MTUS and the Utilization Review decision modifies, delays or denies the treating physician's Request for Authorization, the decision must be supported by medical evidence and a citation provided. It is implied, that the UR physician had to search for the medical evidence in order to come up with the citation. These proposed regulations merely provide guidance to a process that is already required.</p>	

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	<p>of any meaningful safety data; and even in the absence of FDA approval for the treatment. Reviewing physicians could be placed in a situation where compliance with the MTUS requires authorizing (exposing injured workers to) services that would potentially be deemed unacceptable for the enrollment of human subjects by an Institutional Review Board.</p> <p>Commenter states that this creates an overly-laborious, broadly applied solution to address a potential problem of entirely unknown scope and impact. Commenter opines that the intended purpose of the proposed MTUS changes appears to be to provide a process framework for physicians to challenge the correctness of the MTUS. The need for such a process is essentially unknown. There is at this time no information on whether this has been reported to be a hurdle for treating physicians; and if so, what the magnitude and frequency of this of the problem may be. There is no known factual basis for asserting that there are common problems or difficulties</p>		<p>Reject: Section 9792.25 instructs a reviewing physician to consider applicability and bias and then determine the strength of the evidence. Factors that must be considered when determining the strength of evidence include, but are not limited to, the study design, efficacy of the treatment, and treatment harms.</p> <p>Reject: The process framework to evaluate medical evidence is required pursuant to Labor Code section 4604.5. Again, a similar regulatory process is already in place as set forth in section 9792.25(c)(1).</p> <p>Reject: See previous response. In addition, when there are competing recommendations a process must be in place in order to evaluate the medical evidence that supports the competing recommendations.</p>	<p>None.</p> <p>None.</p> <p>None.</p>

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	<p>in this regard.</p> <p>Commenter states that the current proposal is not limited to this unknown problem; but instead creates a solution that is to be applied broadly to every instance in which the MTUS is challenged, or in which the MTUS is silent.</p> <p>Commenter states that the current proposal entails multiple and significant risks of harm to all stakeholders within the workers compensation system; with the singular exception of abusive treating physicians seeking to make review of their treatment plans impractical and/or prohibitively expensive.</p> <p>Commenter opines that the application of a potentially hazardous, impractical, slow, expensive and labor-intensive solution to a problem of unknown import does not appear to be prudent.</p>		<p>Reject. See previous responses.</p> <p>Reject: Disagree. See previous responses.</p> <p>Reject: See previous responses.</p> <p>Reject: A process for assessing/weighing of evidence needs to be applied even in situations where the MTUS's presumption is not being challenged. For example, if the treating physician</p>	<p>None.</p> <p>None.</p> <p>None.</p> <p>None.</p>

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			requests a medical treatment not addressed by the MTUS and provides a citation to a guideline that contains a recommendation, but the UR reviewer believes a competing recommendation should guide the injured worker's medical treatment, a transparent process must be in place so the public understands how the medical evidence is being evaluated by the reviewer.	
9792.23.1 9792.23.9	Commenter recommends that where there are published ACOEM chapters that are more recent than the editions specified in 9792.23.1 through 9792.23.9, that the MTUS be amended to adopt the more recent editions. Commenter opines that is contrary to the stated intent of the current proposal to continue to rely on vague and outdated chapters of ACOEM in instance where clearer, more detailed	Robert Ward January 13, 2015 Written Comment	Reject: Goes beyond the scope of this rulemaking. The proposed changes to section 9792.23, section 9792.24.1, and section 9792.24.3 are merely non-substantial changes to reference citations that needed to be made because of these proposed regulatory changes.	None.

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	and better referenced chapters are available.			
9792.25.1	<p>Commenter states that instances where:</p> <p>A) the correctness of the MTUS is being challenged, and</p> <p>B) the evidence evaluation process described in proposed 8CCR9792.25.1 has been followed; and</p> <p>C) the reviewing physician has determined that the presumption of correctness has not been overcome; then the determination of medical necessity must be made consistent with the MTUS recommendations; rather than the recommendations of a single publication from within the MTUS bibliography.</p> <p>Commenter opines that without this change to the proposed process, the abandonment of the MTUS recommendations is the assured outcome of every challenge to its correctness. Commenter states that the current proposal is inconsistent with Labor Code 4604.5.</p> <p>Commenter states that in every instance where the treating physician</p>	Robert Ward January 13, 2015 Written Comment	<p>Accept. Agree. There is nothing in these proposed regulations that requires the abandonment of the MTUS' recommendation if the MTUS' presumption is unsuccessfully challenged. If a challenge to the MTUS's presumption fails, then the MTUS recommendation shall guide the injured worker's medical care.</p> <p>Reject: Disagree that the current iteration of these</p>	<p>None.</p> <p>None.</p>

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	<p>is the party seeking to rebut the presumption of correctness, the treating physician should be require to:</p> <p>A) Clearly document their intention to rebut on DWC Form RFA (Form RFA should be amended to provide treating physicians the option to indicate, for each requested medical service, that the correctness of the MTUS is being challenged).</p> <p>B) Document the reasoning for the assertion that the MTUS is not correct in the specific case under review; and/or that their alternative evidence is superior.</p> <p>C) Document that they have undertaken the search for, and assessment of, evidence as described in proposed 9792.25.1</p> <p>Commenter states that without these requirements, the proposed process effectively places the burden of proof to defend the MTUS onto the reviewing physician. Commenter opines that shifting the burden of proof to the reviewing physician violates Labor Code 4604.5.</p>		<p>proposed regulations, shifts the burden of proof to rebut the MTUS' presumption of correctness from the treating physician to the reviewing physician. Ultimately, pursuant to Labor Code section 4600, the employer is obligated to provide medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury. Commenter's suggested changes would open the door for a reviewing physician to deny a requested medical treatment because of a procedural deficiency instead of whether the requested treatment is reasonably required to cure or relieve the injured worker from the effects of his or her injury.</p>	
9792.21.1	Commenter states that the proposed	Robert Ward	Reject: For the same reasons	None.

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	<p>regulations should be appended to indicate that in instances where the treating physician as indicated an intent to rebut the correctness of the MTUS, but has failed to provide the information required of them under 9792.21.1, that the presumption of correctness for the MTUS stands and the reviewing physician is not required to evaluate the strength of the treating physician's citation(s).</p> <p>Commenter states that this is integral to the issue of burden of proof.</p>	<p>January 13, 2015 Written Comment</p>	<p>stated above. In addition, the reviewing physician should determine whether or not a requested treatment is reasonably required to cure or relieve the injured worker from the effects of his or her injury and not be able to dodge that responsibility behind a procedural denial of a RFA. As currently written, if there is a procedural deficiency pursuant to section 9792.21.1(b)(1)(B), the Utilization Review physician should request the additional needed information from the treating physician and only if the treating physician fails to provide the requested information within the requisite timeframes can the RFA be denied.</p>	
<p>9792.21.1(b)(1)(A) (2) 9792.21.1(b)(1)(B) (2)</p>	<p>Commenter states that these subsections should be amended to indicate that the reviewing physician is to use only the treating physician's primary source for the evidence comparison process described in 9792.25.1; or should be appended with a reasonable process for a reviewing</p>	<p>Robert Ward January 13, 2015 Written Comment</p>	<p>Reject: Although the DWC is aware of the possibility that there may be abusive providers attempting to “load” the process to make timely review impractical, limiting the reviewing physician to reviewing just the primary</p>	<p>None.</p>

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	<p>physician to rebut the need for multiple citations. Commenter opines that this is a reasonably necessary safeguard to prevent abusive providers from "loading" the process to make timely review impractical.</p> <p>Commenter states that instances where the treating physician is attempting to rebut the MTUS for more than one form of medical treatment, the treating physician would need to indicate a primary source. A single DWC Form RFA may contain one, or may, separate challenges to the MTUS.</p>		<p>source is not a feasible alternative because multiple citations may be needed to show that a variance from the MTUS is reasonably required to cure or relieve the injured worker from the effects of his or her injury.</p>	
New Form	<p>Commenter recommends that the DWC develop and mandate use of a form for treating physicians to use to challenge the correctness of the MTUS, both to facilitate challenges by physicians and to facilitate evaluation of those challenges by reviewing physicians.</p>	<p>Robert Ward January 13, 2015 Written Comment</p>	<p>Reject: Currently, the Application For Independent Medical Review, DWC Form IMR is sufficient.</p>	None.
9792.21.1(a)(2)(A) 9792.21.1(a)(2)(B)	<p>Commenter notes that in instances where the MTUS is silent on a medical service; and there is a recommendation in the most recent version of ACOEM, ODG or other nationally recognized evidence-based guideline; UR physicians and IMR</p>	<p>Robert Ward January 13, 2015 Written Comment</p>	<p>Reject: Competing recommendations can exist in the guidelines commenter mentions. If this occurs, then which recommendation should prevail and guide the injured worker's treatment? Hence,</p>	None.

Medical Treatment Utilization Schedule	RULEMAKING COMMENTS 3RD 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>physicians must be able to utilize those recommendations without having to engage in the evaluation methodology found in 9792.25.1.</p> <p>Commenter states that this is not permitted unless the following sentence is removed from proposed 9792.21.1(a)(2)(A) and (B): "Choose the recommendation that is supported with the best available evidence according to the MTUS Methodology for Evaluating Medical Evidence set forth in section 9792.25.1."</p> <p>Commenter opines that this misplaced language imposes the process for weighing competing source at a stage in the process where such does not exist.</p> <p>Commenter notes that this misplaced language requiring the evaluation process in lieu of use of alternative guidelines is also inconsistent with the hierarchy of evidence set forth in proposed 9792.21(d)(1).</p> <p>Commenter notes that this misplaced</p>		<p>evaluating medical evidence is necessary.</p> <p>Reject: See previous response.</p> <p>Reject: See previous response.</p> <p>Reject: See previous response.</p> <p>Reject: See previous response.</p>	<p>None.</p> <p>None.</p> <p>None.</p> <p>None.</p>

Medical Treatment Utilization Schedule	RULEMAKING COMMENTS 3 RD 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	language is also inconsistent with the most recent revision to 9792.25.1(a), which now states that the methodology for evaluating medical evidence is required, "When competing recommendations are cited to guide medical care".			
9792.25.1(a)	Commenter states that in instances where a UR physician or IMR physician wishes to rebut the presumption of correctness of the MTUS in order to issue an authorization; and the rebuttal is based on more recent evidence than that used to create the MTUS recommendation(s) in the form of ACOEM; ODG; or applicable, non-biased peer-reviewed publications of controlled clinical trial or better; the reviewing physician should be able to rebut without engaging in the evaluation process described in 9792.9.1. The reasoning for this is that otherwise, the uncompensated labor required of reviewing physicians to authorize when the MTUS recommends otherwise creates a significant bias against the interests of the injured worker. This is particularly applicable in that most of the ACOEM	Robert Ward January 13, 2015 Written Comment	Reject: If a UR physician is approving an RFA, there is no reason to engage in the evaluation process because there will be no competing recommendations to evaluate. Commenter's hypothetical does not make sense when applied to UR physicians. However, if the UR physician modifies, delays or denies an RFA, then the IMR physician is required to engage in the evaluation process set forth in section 9792.25.1.	None.

Medical Treatment Utilization Schedule	RULEMAKING COMMENTS 3RD 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>chapters that have been adopted into the MTUS have not been reviewed or revised in over a decade.</p> <p>Commenter states that in instances where there is limited data on clinical efficacy and no data on safety, reviewing physicians should not be required to authorize. While evidence-based medicine clearly favors evidence in place of private empiricism, it does not embrace blind adherence to insufficient evidence. In such circumstances, commenter opines that clinical professionals should be allowed to exercise clinical judgment.</p> <p>Commenter recommends that section 9792.25.1(a) be amended as follows:</p> <p>"Medical care shall be in accordance with the recommendation supported by the best available evidence rated as level 2 or higher."</p> <p>Commenter opines that requiring reviewing physicians to make authorizations consistent with evidence levels 3, 4 and 5 insures that</p>		<p>Accept: Agree. These proposed regulations do not embrace blind adherence to insufficient evidence. Section 9792.25.1 provides a transparent, systematic methodology to evaluate medical evidence. Physicians will be exercising clinical judgment.</p> <p>Reject: Commenter's suggested revisions will not be adopted. Although medical evidence levels 3, 4 and 5 are lower levels than 1a, 1b, 1c and 2 on the hierarchy of evidence, they are still considered medical evidence. Section 9792.25.1 instructs a reviewing physician to consider applicability and bias and then determine the</p>	<p>None.</p> <p>None.</p>

Medical Treatment Utilization Schedule	RULEMAKING COMMENTS 3RD 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>experimental services and services of unknown safety will be authorized. Commenter states that this is not just imprudent, it is also unethical, in that it effectively makes injured workers unwitting human subjects.</p>		<p>strength of the evidence. Factors that must be considered when determining the strength of evidence include, but are not limited to, the study design, efficacy of the treatment, and treatment harms.</p>	