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| **EVIDENCE-BASED UPDATES TO THE MEDICAL TREATMENT SCHECULE (MTUS)** | **RULEMAKING COMMENTS**  **30 DAY COMMENT PERIOD**  **PROPOSED OPIOID UPDATE** | **NAME OF PERSON/ AFFILIATION** | **RESPONSE** | **ACTION** |
| General comment | Commenter has reviewed the proposed updates and has no comment at this time. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund  January 25, 2024  Written Comment | Agree. | None. |
| General comment | Commenter has been involved in the California workers’ compensation system since 1973 in various capacities – as a claims administrator, attorney at law, licensed psychologist, and QME for Psychology. He is a Special Education Child Advocate, Adult Advocate for various social systems and has represented disabled veterans.  Commenter states that currently there are two specific guidelines in effect for all California Physicians, as well as the Opioid guideline for workers’ compensation injured workers, which is the subject of this MTUS update.  Commenter opines that there are inconsistencies between these three guidelines and no clear guidance for California physicians as how to reconcile these inconsistencies.  Included with his comments are:   * Pain Patient Bill of Rights And Intractable Pain, California Health and Safety Code 124960-61 **[Exhibit A – copy provided upon request]** * The Complete Medical Board of California Opioid Guideline **[Exhibit B – copy provided upon request]** * Illustrative Example of Legacy California Workers’ Compensation Patient **[Exhibit C – a copy provided upon request]**   Commenter notes that The Pain Patient Bill of rights was revised by the Legislature in 2001 during the “opioid crisis.” The legislature did not remove any of the original language but clarified and strengthened the existing language. Commenter notes that this bill of rights provides that:  (h) A patient suffering from severe chronic intractable pain has the option to request or reject the use of any or all modalities to relieve his or her pain.  (j) A patient who suffers from severe chronic intractable pain has the option to choose opiate medication for the treatment of severe chronic intractable pain as long as the prescribing is in conformance with Section 2241.5 of the Business and Profession Code.  Commenter notes that the proposed 2024 ACOEM Opioid Guidelines does not provide for Intractable Pain, nor does it refer to California Law. Commenter opines that the basic rights of California based patients are not honored by ACOEM which applies nationwide and has no consideration of state mandated provisions and limitations.  Commenter notes that the proposed 2024 Opioid Guideline clearly defines in the Introduction on Page 3 that it does not apply to intractable pain:  “The ACOEM Opioids Guideline is designed to provide healthcare providers (who are the primary target users of this guideline) with evidence-based guidance on the use of opioids for the treatment of working-age adults with acute, subacute, chronic, or post-operative nociceptive pain.”  Commenter notes that the ACOEM guideline defines in its scope that it addresses acute pain, chronic pain, postoperative pain, and subacute pain (pages 4-5). However, it states that intractable pain is not subject to the scope of the guideline (page 5)  Commenter stresses that this proposed ACOEM guideline omits any guidance for a patient it defines as suffering from intractable pain.  Commenter states that The Pain Patient Bill of Rights is California law, applicable to all patients within the state. No category of patient is sequestered from this law. By its terms, the law is mandatory, and intractable pain patients have the absolute right to any modality of treatment they desire. Injured workers in California should not have care inferior to the mandatory standard for any other category of patient. Commenter opines that a solution for intractable pain, and integration of the Pain Patient Bill of Rights needs to be addressed before the Proposed Opioid Guideline in finalized.  Regarding the Complete Medical Board of California Opioid Guideline, commenter notes that commencing on page 18, it defines 13 special patient populations and notably on page 19, specifically indicates that patients with intractable pain are not subject to the MBC Guideline, unlike the ACOEM guideline that defines, but then does not later clearly indicate that patients with intractable pain are not subject to the ACOEM Opioid Guide.  Commenter opines that California physicians are faced with two conflicting guidelines, the MBC guideline which protects the Pain Patient Bill of Rights, and the existing and Proposed ACOEM Guideline that does not. Commenter recommends that the inclusion of a clear statement that this Proposed ACOEM Opioid Treatment Guideline does not apply to patients with intractable pain, as does the MBC Opioid Guideline on Page 19, would resolve this inconsistency.  Finally, commenter submitted examples of IMR decisions that were issued when reviewing requested treatment for an elderly injured worker whom the commenter acts as an advocate for. In these examples he illustrates that medical reviewers are inappropriately applying the 2017 ACOEM Opioid Guides to deny pain medication for a legacy patient who has intractable pain who should be covered for treatment un the California Pain Patient Bill of Rights.  To correct this problem, commenter makes the following suggestions:   * Set forth a specific Opioid guideline for injured workers who are permanently and totally disabled. Expectation of improvement should not be required. * Define MMI in the Opioid Guidelines, and require UR/IMR to take into account the factors of permanent disability found by the WCAB ALJ, and integrate that into factors for consideration of the need for Opiate medication, and the restrictions on use of “improvement of functioning” if those factors are part of the justification for denying authorization for properly prescribed Opiate medication. * In the even of a UR/IMR evaluation of a Legacy Patient with many years of opiate medication, require the claims administrator to submit, and the UR/IMR reviewer to review and comment upon all of the medical records pertaining to the injury, rather than just the last few months of treatment. Currently, the reviewer receives less than one year of medical records. | Rene Thomas Folse, JD, Ph.D, Inc.  Licensed Psychologist and Attorney at Law  January 23, 2024  Written Comment  January 26, 2024  Oral Comment | Disagree. The comment exceeds the scope of this rulemaking. Labor Code section 5307.27 provides for the adoption of a MTUS that shall incorporate evidence-based, peer-reviewed and nationally recognized standards of care recommended by the commission pursuant to Section 77.5, and which addresses, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities **commonly** performed in workers’ compensation cases.  While the recommended guidelines set forth in the MTUS are presumptively correct on the issue of extent and scope of medical treatment, treatment shall not be denied on the sole basis that the condition or injury is not addressed by the MTUS. There are two exceptions to the MTUS and these can be found in title 8 California Code of Regulations section 9792.21(d). The first exception addresses when the MTUS does not cover a condition and the second exception addresses how to overcome the MTUS presumption when there is other scientific medical evidence to support a variance from the schedule. These exceptions may apply to the cases you mention.  Please review title 8 California Code of Regulations sections 9792.21.11, 9792.25 and 9792.25.1 for more information on medical evidence search sequence, quality and strength of evidence and evaluating medical evidence. These sections are not the subject of this rulemaking.  A dispute with regards to an IMR or UR determination is not the subject of this rulemaking.  The Medical Board of California Guidelines for Prescribing Controlled Substances for Pain closely follows the ACOEM guideline. The Medical Board of California Guidelines for Prescribing Controlled Substances for Pain on page 24 provides how the physician shall utilize both the California Workers’ Compensation MTUS and the Medical Board of California Guidelines for Prescribing Controlled Substances for Pain.  A physician’s requirement to consider the Pain Patient Bill of Rights is consistent with consideration of best evidence-based practice which is what is considered in this MTUS adoption. Treating physicians are encouraged to reference any documentation supporting their desired treatment plan and to provide corresponding clinical findings.  The DWC is adopting the ACOEM Opioids Guideline which became effective December 12, 2023. The DWC works with ACOEM to adopt the most up to date evidence-based recommendations for treatment procedures and modalities **commonly** performed in workers’ compensation cases.  Commenter is encouraged to submit any studies to ACOEM through the following web address:  <https://acoem.org/Practice-Resources/Practice-Guidelines-Center>  ACOEM conducts comprehensive updates to all of its guidelines every 3 to 5 years. However, ACOEM accepts submissions of evidence from any source. All literature is reviewed following the same process (i.e., quality scoring, critiquing, and critical appraisal) for the development of evidence-based guidance. If there are major changes in literature, it may necessitate a focused update to the ACEOM guideline. | None. |
| General Comment | Commenter notes that this proposed update does not specifically address Buprenorphine for chronic pain. Commenter states that the guideline does reference research that’s been done on Buprenorphine for pain, but the focus is on opioid dependency.  Commenter notes that there is an increased interest in switching patients to Buprenorphine because it’s a class A, Schedule 2 to Schedule 3 opioid. Commenter would like to know if California will consider having a specific guideline for Buprenorphine for pain. | Joyce Ho  January 26, 2024  Oral Comment | This comment exceeds the scope of this rulemaking and the DWC does not plan to have a specific guideline for buprenorphine for pain.  Commenter is encouraged to submit their comment and any studies to ACOEM through the following web address:  <https://acoem.org/Practice-Resources/Practice-Guidelines-Center>  ACOEM conducts comprehensive updates to all of its guidelines every 3 to 5 years. However, ACOEM accepts submissions of evidence from any source. All literature is reviewed following the same process (i.e., quality scoring, critiquing, and critical appraisal) for the development of evidence-based guidance. If there are major changes in literature, it may necessitate a focused update to the ACOEM guideline. |  |