

Medical Treatment Utilization Schedule	RULEMAKING COMMENTS ORAL TESTIMONY GIVEN AT AUGUST 23, 2006 HEARING	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Sections 9792.20-9792.23	<p>Commenter states that she is an occupational therapist, and for the last 15 years has had a practice that was primarily dealing with orthopedic soft tissue injury, work injury related.</p> <p>With reference to Section 9792.21, commenter applauds DWC for including the provision which states that treatment shall not be denied on the sole basis that a condition or injury is not addressed by the ACOEM Practice Guidelines. Commenter is concerned with how the provision is going to be interpreted and implemented into actual practice. Commenter questions whether the providers need to include the evidence referenced in that section with every bill or every claim. Commenter further questions whether the claims administrator will be empowered to determine if the treatment provided is in accordance with other scientific evidence-based medical treatment guidelines that are generally recognized by the national medical community.</p> <p>Commenter disagrees with Section 9792.23(a)(1)(E), wherein the section states that the medical evidence evaluation advisory committee shall have one member from the physical or occupational therapy field. Commenter states that occupational therapy is in fact a unique and separate profession from physical therapy, and the therapies are not interchangeable. Commenter requests that the committee be expanded to include an occupational therapist with a specialty in work injury.</p>	<p>Mary Foto American Occupational Therapy Association (AOTA) August 23, 2006 Oral Comment</p>	<p>Agree in part. The medical provider and the claims administrator can decide on an individual case whether to apply other evidence-based medical treatment guidelines. If a dispute arises, the matter will be resolved using the provisions of Labor Code section 4062, and subsequently before a workers' compensation administrative law judge. Agree with Commenter's suggestion that the medical evidence evaluation advisory committee have one member from the physical therapy field and one member from the occupational therapy field. See also, Response No. 14—Composition of Medical Evidence Evaluation Advisory Committee.</p>	<p>Section 9792.23(a)(2)(E) has been amended to require that the medical evidence evaluation advisory committee have a representative from the physical therapy field. New Section 9792.23(a)(2)(H) has been added to the proposed regulations to require that the medical evidence evaluation advisory committee have a representative from the occupational therapy field.</p>

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Sections 9792.20-9792.23	<p>Commenter, assisted by an interpreter, gave a history of an injury on April 4, 2001. It appears from his testimony that there was a dispute as to whether or not his injury was industrially-related as he was injured while driving his own vehicle. The Commenter spent about six thousand dollars in treatment, and the insurance company refuses to reimburse him. It also appears that the insurance company is seeking reimbursement in the amount of eight thousand seven hundred dollars for medical expenses.</p> <p>Commenter further references CIGA, and states that the insurance company wants him to join CIGA. He does not believe that after he joins CIGA, the insurance company will stop asking him for reimbursement, and will use it as an excuse not to pay for his life-long treatment. He knows that the lawyers might be able to deal with this case, but he already is totally disappointed about the law system of the United States.</p>	<p>Lun Wong Injured Worker (with the aid of an interpreter) August 23, 2006 Oral Comment</p>	<p>Disagree. Comment does not address the substance of the proposed regulations.</p>	<p>None.</p>
Sections 9792.20-9792.23	<p>Commenter represents the California Applicants' Attorneys Association. Commenter objects to the proposed regulations on Medical Treatment Utilization Schedule re-adopting the ACOEM Guidelines as presumptively correct for acute as well as chronic conditions. The object of medical treatment guidelines is to ensure that injured workers receive the care that they need to cure and relieve from the effects of their injuries; they are not conceived as a cost-saving device. Cost savings will result from correct care delivered in a timely manner. Commenter objects to applying ACOEM to chronic</p>	<p>Todd McFarren California Applicants' Attorneys Association August 23, 2006 Oral Comment</p>	<p>Disagree. See Response No. 11—Chronic Conditions</p>	<p>None.</p>

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	<p>conditions when the guide itself states it is for acute conditions.</p> <p>Commenter states that the Legislature adopted ACOEM only as an interim step, sight unseen, and prior to publication. The RAND study commissioned by the Health and Safety Commission concluded that California would be better off starting from scratch, or RAND suggested that the state patch multiple guidelines together into a coherent set. Commenter states that ACOEM enjoys no scientific validity, even with respect to acute conditions. It is a guideline, an attempt to orient the treating doctor. Commenter further states that in July 2005, the State of Illinois rejected any one particular set of medical treatment guidelines including ACOEM and referred instead to: "Standards of care or nationally recognized peer-review guidelines as well as nationally recognized evidence-based standards." Commenter offers that conflicts could be resolved by the hierarchy of medical evidence. This way doctors must still comply with guidelines, peer-review and evidence based, but have the flexibility to treat the patient as an individual.</p>		<p>Disagree. See Response No. 9—Incorporation of ACOEM into the MTUS; See also Response No. 14—Acupuncture Medical Treatment Guidelines. Moreover, see Response No. 7—Adoption of Supplemental Guidelines. Further, proposed Section 9792.21(c) provides that treatment shall not be denied on the sole basis that the condition or injury is not addressed by the Medical Treatment Utilization Schedule. In this situation, the claims administrator shall authorize treatment if such treatment is in accordance with other scientifically and evidence-based, peer reviewed, medical treatment guidelines that are nationally recognized by the medical community. Thus this provision allows for the proper provision of medical treatment at all times, and as correctly pointed out by commenter, conflicts are resolved by the strength of evidence, as set forth in proposed Section 9792.22(c).</p>	<p>New proposed Section 9792.21(a)(2) sets forth the Acupuncture Medical Treatment Guidelines as follows:</p> <p>§ 9792.21. (a) (2) Acupuncture Medical Treatment Guidelines</p> <p>The Acupuncture Medical Treatment Guidelines set forth in this subdivision shall supersede the text in the ACOEM Practice Guidelines, Second Edition, relating to acupuncture, except for shoulder complaints, and shall address acupuncture treatment where not discussed in the ACOEM Practice Guidelines.</p> <p>(A) Definitions:</p> <p>(i) "Acupuncture" is used as an option when pain medication is reduced or not tolerated, it may be used as an adjunct to physical rehabilitation and/or surgical intervention to hasten</p>

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				<p>functional recovery. It is the insertion and removal of filiform needles to stimulate acupoints (acupuncture points). Needles may be inserted, manipulated, and retained for a period of time. Acupuncture can be used to reduce pain, reduce inflammation, increase blood flow, increase range of motion, decrease the side effect of medication-induced nausea, promote relaxation in an anxious patient, and reduce muscle spasm.</p> <p>(ii) “Acupuncture with electrical stimulation” is the use of electrical current (micro- amperage or milli-amperage) on the needles at the acupuncture site. It is used to increase effectiveness of the needles by continuous stimulation of the acupoint. Physiological effects (depending on location and settings) can include endorphin release for pain relief, reduction of inflammation,</p>

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				<p>increased blood circulation, analgesia through interruption of pain stimulus, and muscle relaxation. It is indicated to treat chronic pain conditions, radiating pain along a nerve pathway, muscle spasm, inflammation, scar tissue pain, and pain located in multiple sites.</p> <p>(iii) "Chronic pain for purposes of acupuncture" means pain that persists for at least 30 days beyond the usual course of an acute disease or a reasonable time for an injury to heal or that is associated with a chronic pathological process that causes continuous pain (e.g., reflex sympathetic dystrophy). The very definition of chronic pain describes a delay or outright failure to relieve pain associated with some specific illness or accident.</p> <p>(B) Indications for acupuncture or acupuncture with electrical stimulation</p>

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				<p>include the following. presenting complaints in reference to the following ACOEM Practice Guidelines Chapter Headings:</p> <ul style="list-style-type: none"> (i) Neck and Upper Back Complaints (ii) Elbow Complaints (iii) Forearm, Wrist, and Hand Complaints (iv) Low Back Complaints (v) Knee Complaints (vi) Ankle and Foot Complaints (vii) Pain, Suffering, and the Restoration of Function <p>(C) Frequency and duration of acupuncture or acupuncture with electrical stimulation may be performed as follows:</p> <ul style="list-style-type: none"> (i) Time to produce functional improvement: 3 to 6 treatments.
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Section 9792.21	Commenter references proposed Section Sections 9792.21 and Section 9792.8, of the Utilization Review Standards. Commenter states that these sections address the idea that treatment cannot be denied based on ACOEM. Commenter states that these two sections should be harmonized. Commenter indicates that DWC should be talking about treatment		Agree in part. See Response No. 10— “Medical Treatment” Not Addressed in the Medical Treatment Utilization Schedule as Opposed to “Condition or Injury” not Addressed in the Medical Treatment Utilization Schedule. Agree in part that the Utilization Review Standards	<p>(ii) Frequency: 1 to 3 times per week</p> <p>(iii) Optimum duration: 1 to 2 months</p> <p>(iv) Maximum duration: 14 treatments.</p> <p>(D) Acupuncture treatments may be extended if functional improvement is documented as defined in Section 9792.20(e).</p> <p>(E) It is beyond the scope of the Acupuncture Medical Treatment Guidelines to state the precautions, limitations, contraindications or adverse events resulting from acupuncture or acupuncture with electrical stimulations. These decisions are left up to the acupuncturist.</p> <p>None.</p>

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	not about conditions and injuries, as they are choose between different concepts.		regulations, at Section 9792.8(a)(2), and proposed section 9792.21(c) need to be harmonized. The Utilization Review Standards regulations, at Section 9792.8(a)(2) states "Treatment may not be denied on the sole basis that the treatment is not addressed by the ACOEM Guidelines until adoption of the medical treatment utilization schedule pursuant to Labor Code section 5302.27." This language will be corrected through formal rulemaking in the near future to conform to the MTUS regulations.	
Sections 9792.20-9792.23	Commenter testified at length about his case and denials of requests for medical treatment under the ACOEM Practice Guidelines. Commenter further testified that when his medical treatment requests are denied, the claims administrator does not specify the section of ACOEM relied upon for the denial.	William England Injured Worker August 23, 2006 Oral Comment	Disagree. Comment does not address the substance of the proposed regulations. Both Sections 9792.21(c), and 9792.22(b) prohibit "arbitrary" use of the ACOEM Practice Guidelines as alleged by commenter. This rulemaking does not relate to the Utilization Review Standards regulations which became effective on September 22, 2005. Moreover, the Utilization Review Enforcement regulations (Sections 9792.11 through 9792.15) are undergoing formal rulemaking process. The regulations assess penalties for violations of ACOEM applications as testified by Commenter.	None.
Sections 9792.20-9792.23	Commenter states that the ACOEM Practice Guidelines and utilization review derives out of ACOEM which was inserted into the legislation of SB 899. Commenter appears to	Dina Padilla California Coalition for Workers' Memorial Day August 23, 2006	Disagree. Comment does not address the substance of the proposed regulations. Both Sections 9792.21(c), and 9792.22(b) prohibit	None.

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	<p>state that ACOEM is also a national organization, indeed an international organization, comprised of over 6,000 international health care staff, which includes utilization review, which comes from large corporations such as Dow Chemical Company. Commenter also states that she does not know how they can practice medicine in the State of California as it is her understanding that people who treat people here in California have to be California licensed. Commenter states that ACOEM violates the laws of the state, and this is the result of the passing of SB 899 by Governor Schwarzenegger and the legislators who co-authored the bill. Commenter adds that the insurance carrier adjusters have denied medical benefits, acting as licensed doctors, which is against the laws of the state. Now, under international utilization review, SB 899, insurance adjusters are being trained to use utilization review for all medical care treatments or visits to treating physicians, and commenter opines this is unlawful.</p> <p>Commenter testified at length about a conversation she had with a CNA Insurance adjuster which appeared to be on the topic of utilization review. Commenter appears to allege that the ACOEM Practice Guidelines are co-sponsored by Glaxo, Smith & Kline, one of many corporations, and is one of the largest global pharmaceutical companies that are conducting testing on genetics and DNA. Commenter references Pfizer Drug and the stock market.</p>	Oral Comment	<p>“arbitrary” use of the ACOEM Practice Guidelines as alleged by commenter. This rulemaking does not relate to the Utilization Review Standards regulations which became effective on September 22, 2005. Moreover, the Utilization Review Enforcement regulations (Sections 9792.11 through 9792.15) are undergoing formal rulemaking process. The regulations assess penalties for violations of ACOEM applications as testified by Commenter. Furthermore, Commenter’s allegations of conspiracy between corporations may be brought to the Legislature.</p>	

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	<p>Commenter opines that the ACOEM Guidelines were inserted as SB 899 to cut off past benefits, ex post facto, of all injured workers prior to SB 899 and post-injured workers and especially those who are unable to go back to work. Commenter opines that explains at length how ACOEM and utilization review is meant to eliminate particular medical treatments/disabilities and to eliminate OSHA standards. Commenter also criticized the Information and Assistance Unit of the DWC, stating that assistance from that unit was almost non-existent.</p>			
<p>Sections 9792.20-9792.23</p>	<p>Commenter opines that the utilization review and the ACOEM Guidelines are a fraud. Commenter further testified at length about his opinion that the ACOEM Practice Guidelines and the ACOEM organization is a pro-corporate, pro-management organization. Commenter opines that these special corporate interest physicians' organizations put the interests of workers compensation insurance carriers ahead of California's injured workers. Commenter believes this is a criminal conspiracy by the insurance companies to shift the cost of worker' compensation.</p>	<p>Steve Zeltzer, Chair California Coalition for Workers' Memorial Day August 23, 2006 Oral Comment</p>	<p>Disagree. Comment does not address the substance of the proposed regulations. Both Sections 9792.21(c), and 9792.22(b) prohibit "arbitrary" use of the ACOEM Practice Guidelines as alleged by commenter. This rulemaking does not relate to the Utilization Review Standards regulations which became effective on September 22, 2005. Moreover, the Utilization Review Enforcement regulations (Sections 9792.11 through 9792.15) are undergoing formal rulemaking process. The regulations assess penalties for violations of ACOEM applications as testified by Commenter. Furthermore, Commenter's allegations of conspiracy between corporations may be brought to the Legislature.</p>	<p>None.</p>

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<p>Sections 9792.20-9792.23</p>	<p>Commenter opined that the RAND study performed in 2004 revealed that ACOEM Guidelines do not match the Labor Code guidelines of being evidence based on scientific data. Commenter recommends that a broader panel of specialty providers, including, but not limited to, neurology, psychiatry, occupational medicine, orthopedic surgery, neurosurgery, internal medicine and physical medicine and rehabilitation be selected to establish practice guidelines. Commenter opines that this will reflect the reality of care to the injured worker.</p> <p>Commenter opines that ACOEM Guidelines leave gaps and actually present challenges to the delivery of expeditious medical care. Commenter states that denials and delays are occurring that prevent employees, employers and patients from moving forward to meet their goals. Commenter opines that the ACOEM Practice Guidelines were not established for the purpose of utilization review. Commenter states that Barry Eisenberg, the Executive Director of ACOEM, has stated that these recommendations are suggestions and not mandates.</p>	<p>Meredith Saunders, M.D. U.S. HealthWorks August 23, 2006 Oral Comment</p>	<p>Agree in part. Disagree with commenter’s comment that the ACOEM Practice Guidelines do not meet the requirements of the Labor Code based on the RAND study. See, Response No. 6— ACOEM Meets the Requirements of Labor Code section 5307.27 Also, see Response No. 9—Incorporation of ACOEM into the MTUS.</p> <p>Agree in part with the suggestion that the medical evidence evaluation advisory committee be augmented in recognition of the role and contribution of other specialties in the treatment of workplace injuries. We have expanded the number of disciplines included in the committee to better address “the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers’ compensation cases” as required by the statute. (Lab. Code, § 5307.27.) Further, see Response No. 13—Composition of medical evidence evaluation advisory committee. Moreover, the Medical Director can appoint an orthopedic surgeon as a subject matter expert if required by the specific topic being reviewed.</p>	<p>Section 9792.23(a)(2)(L) has been added to the proposed regulations to require that the medical evidence evaluation advisory committee shall have a representative from the neurology field.</p> <p>Section 9792.23(a)(2)(H) has been added to the proposed regulations to require that the medical evidence evaluation advisory committee shall have a representative from the occupational therapy field.</p> <p>Section 9792.23(a)(2)(I) has been added to the proposed regulations to require that the medical evidence evaluation advisory committee shall have a representative from the psychiatry field.</p> <p>Section 9792.23(a)(2)(J) has been added to the proposed regulations to require that the medical evidence evaluation advisory committee shall have a representative from the neurosurgery</p>

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	<p>length how the Medicare model works in California, and that the members of such committee are appointed by the state-wide association in the pertinent field. Commenter also suggests that it would be appropriate to appoint a representative from the paying community, whether a workers' compensation carrier or representative from the self-insured employers. Commenter opines that the structure of the committee should represent all the parties that are involved in the workers' comp arena. Commenter opines that pursuant to the Medicare model, subcommittee should be allowed to bring in experts at the discretion of the Medical Director.</p>		<p>Medicare Carrier Advisory Committee (CCAC) and have determined that we cannot structure our committee entirely as the CCAC has been structured. After consultation with their medical director, we have decided to increase the number of specialists in the committee. As previously stated, the medical evidence evaluation advisory committee will be addressing the requirements of the statute to develop a MTUS that addresses “the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers’ compensation cases” as required by the statute, and not billing procedures. We agree that the committee should include members from allied health professionals and have thus included an acupuncturist, a physical therapist, and an occupational therapist. Moreover, the agency is the entity responsible to develop the regulations with the input of the community. The agency’s goal is to maintain the advisory committee as manageable and effective. The committee will advise the Medical Director, but ultimately the agency, as represented by its Administrative Director, is responsible for the final decisions regarding the MTUS, not the members of the committee. DWC does expect that the committee will</p>	<p>evaluation advisory committee.</p>

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Section 9792.23	Commenter opines that the advisory committee should hold its meetings publicly where people can see the process work and see the deliberative nature of the process.		function in a very similar way the CCAC in that the DWC Medical Director will submit a draft of treatment recommendations to the committee for their review. Disagree. See Response No. 15— Meetings of the medical evidence evaluation advisory committee are not Subject to the Open Meeting Requirements of the Bagley-Keene Open Meeting Act.	None.
Sections 9792.20-9792.23	<p>Commenter states that the evidence-based requirements set forth in the proposed regulations for all the specialties create a most difficult problem in the area of acupuncture or healing therapy in that these treatments have been effectively removed from the system over the past two years since the adoption of ACOEM. Commenter states that his organization has received mostly denials of treatment from insurance companies and utilization review companies. Commenter further states that there are very few of their members that still practice within the workers' compensation system based on functional improvement.</p> <p>Commenter appears to imply that the evidence-based requirements set forth in the regulations are less stringent for the ACOEM Practice Guidelines, and yet under the proposed regulations these guidelines are presumed to be correct. Commenter states that the ACOEM Practice Guidelines do not provide evidence-based science for the field of acupuncture or healing therapy. Commenter</p>	<p>Ted Priebe, Executive Director National Oriental Medicine Accreditation Agency August 23, 2006 Oral Comment</p>	Agree in part. See, Response No. 14—Acupuncture Medical Treatment Guidelines. Disagree with comment that the ACOEM Practice Guidelines do not meet the evidence-based requirements pursuant to the statute and the proposed regulations. See, Response No. 9—Incorporation of ACOEM into the MTUS.	New proposed Section 9792.21(a)(2) sets forth the Acupuncture Medical Treatment Guidelines as set forth above.

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	further states that the Acupuncture Guidelines have been rejected by ACOEM in a number of ways, not just through the utilization review process, but also even through participation in utilization review committees.			
Sections 9792.20- 9792.23	Commenter testified that injured workers are being denied everything, e.g., medicine and chiropractic treatment, and he is hopeful that DWC corrects this problem.	Francisco Plasencia VotersInjuredatWork August 23, 2006 Oral Comment	Disagree. Comment does not address the substance of the proposed regulations.	None.
Sections 9792.20- 9792.23	Commenter testified on behalf of two organizations: the Western Occupational Environmental Medical Association (WOEMA), which is the western region component society of ACOEM, and the California Academy of Family Physicians. Commenter stated that there are seven thousand practicing family physicians in the state of California. Commenter further stated that the typical family physician will devote 10 or 15 percent of his or her practice to workers' compensation cases. Commenter requested that because of family physicians participation in the workers' compensation area, the medical evidence evaluation advisory committee should have a representative from this field. Commenter also requested that an expert of no particular affiliation who is simply an expert on clinical research should be added to the committee.	Don Schinske Western Occupational Environmental Medical Association (WOEMA)/California Academy of Family Physicians August 23, 2006 Oral Comment	Agree in part. See Response No. 13—Composition of Medical Evidence Evaluation Advisory Committee. We disagree with the comment that the committee should have an expert on clinical research as the function of reviewing evidence will be done prior to the committee meetings. DWC will be either adding staff or subcontracting with necessary resources to address this need.	Section 9792.23(a)(2)(K) has been added to the proposed regulations to require that the medical evidence evaluation advisory committee shall have a representative from the family physician field.
Section 9792.23	Commenter states that the Osteopathic Physicians and Surgeons of California (OPSC) organization commends the DWC for the proposal to establish a Medical Evidence Advisory Committee. Commenter states that osteopathic physicians are fully licensed physicians in California; they receive medical training equivalent to a medical doctor, and	Kathleen S. Creason Executive Director Osteopathic Physicians and Surgeons of California August 23, 2006 Oral Comment	Agree that a Doctor of Osteopathy should be represented in the advisory committee as they provide medical treatment to injured workers in California. Section 9792.23(a)(2) has been amended to require that one of the members be certified by the American Osteopathic Association	Section 9792.23(a)(2) has been amended to state: The members of the medical evidence evaluation advisory committee shall be appointed by the Medical Director, or his or her

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Sections 9792.22	<p>receive additional training in manual manipulation. Commenter believes these points are relevant because there are a significant number of osteopathic physicians who participate in the workers' compensation program and, therefore, are very interested in these regulations. Commenter suggests that the medical evidence evaluation advisory committee include an osteopathic physician on that committee.</p> <p>Commenter references the issue of evidence-based medicine, and OPSC and states that she is very pleased to see the categories A, B and C included, but emphasizes that category D should be considered as well. Commenter indicates that there are a variety of areas that could never be qualified or quantified under criteria that falls under A, B or C, thus the Division is encouraged to consider implementation or consideration of category D as well.</p> <p>Commenter references the issue of injuries not</p>		<p>approved specialty boards (AOA).</p> <p>Disagree. See, Response No. 12—ACOEM's Criteria Used to Rate Randomized Controlled Trials and Strength of Evidence Ratings.</p> <p>Disagree. See Response No. 10—</p>	<p>designee, and shall consist of 17 members of the medical community, holding a Medical Doctor (M.D.), Doctor of Osteopathy (D.O.), who are board certified by an American Board of Medical Specialties (ABMS) or American Osteopathic Association approved specialty boards (AOA) respectively, Doctor of Chiropractic (D.C.), Physical Therapy (P.T.), Occupational Therapy (O.T.), Acupuncture (L.Ac.), Psychology (PhD.), or Doctor of Podiatric Medicine (DPM) licenses, and representing the following specialty fields:</p> <p>None.</p> <p>None.</p>

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	included or not discussed by ACOEM and states that issue of treatment not addressed by ACOEM should be addressed in the regulations.		“Medical Treatment” Not Addressed in the Medical Treatment Utilization Schedule as Opposed to “Condition or Injury” not Addressed in the Medical Treatment Schedule.	
Sections 9792.20-9792.23	Commenter is an occupational therapist, in private practice in California for 23 years. She is also committee chair for the third-party reimbursement for Occupational Therapy Association of California. Commenter states that there are about 9,200 occupational therapists and occupational therapy aides in California. Commenter states that her own personal experience has been that the delay of treatment under the ACOEM Guidelines has affected patients and their outcomes. Commenter also requests that an occupational therapist be represented in the advisory committee.	Margaret Gokey Occupational Therapist August 23, 2006 Oral Comment	Agree in part. We agree that a representative from the occupational therapy field should be represented in the advisory committee. Further, Comments relating to the Utilization Review Enforcement regulations (Sections 9792.11 through 9792.15) may be submitted in connection with that regulation which is undergoing formal rulemaking process.	Section 9792.23(a)(2)(H) has been added to the proposed regulations to require that the medical evidence evaluation advisory committee shall have a representative from the occupational therapy field.
Sections 9792.20-9792.23	Commenter describes at length his industrial injury, and the medications he was prescribed. Commenter appears to make reference to a conspiracy between the pharmaceutical companies and ACOEM. Commenter appears to indicate that the physical therapy and/or occupational therapy (including prescription of TENS unit) was what really helped him.	Jim Fischer Injured Worker August 23, 2006 Oral Comment	Disagree. Comment does not address the substance of the proposed regulations. Limitations on occupational therapy and physical therapy visits are required by the statute (Lab. Code, §4604.5(d)(1)). These limitations are a policy matter for the legislature and objections should be addressed to the legislature. Moreover, Commenter’s allegations of conspiracy between corporations and ACOEM may be brought to the Legislature. See also, Response No. 7—Adoption of Supplemental Guidelines.	None.
Sections 9792.20-9792.23	Commenter testified physicians are having difficulty trying to get necessary treatment to their patients because of the delays, the	Carlyle R. Brakensiek California Society of Industrial Medicine and	Comment does not address the substance of the proposed regulations. Comments relating to the	None.

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	<p>denials, etc., that come as a result of the misapplication of the ACOEM Guidelines.</p> <p>Commenter argues that the ACOEM Practice Guidelines do not apply to chronic conditions. Commenter states that ACOEM has attempted to revisit this issue recently but he believes that there is no effort put in to apply to chronic injuries.</p> <p>Commenter states that RAND referred to the ACOEM Guidelines as mediocre, and this is a problem with respect to the presumption of correctness. Commenter states that under the statute, the MTUS must be evidence based, scientifically based, nationally recognized and peer reviewed. Commenter opines that the ACOEM Guidelines fail at least two of those tests. They are not all scientifically based, and they are not all peer reviewed.</p>	<p>Surgery/California Society of Physical Medicine and Rehabilitation/U.S. Healthworks/VQ Orthocare August 23, 2006 Oral Comment</p>	<p>Utilization Review Enforcement regulations (Sections 9792.11 through 9792.15) may be submitted in connection with that regulation which is undergoing formal rulemaking process.</p> <p>Disagree. See, Response No. 11—Chronic Conditions.</p> <p>Disagree. See Response No. 9—Incorporation of ACOEM into the MTUS. See also, Response No. 6—ACOEM Meets the Requirements of Labor Code section 5307.27.</p>	<p>None.</p> <p>None.</p>
Sections 9792.20-9792.23	<p>Commenter states that CCA is opposed to the adoption of these guidelines for the utilization scheduled for chiropractic care. Commenter requests that interim guidelines be adopted to address gaps. Commenter states that for those areas a trial of chiropractic care should be allowed in four to six visits, and if there is functional improvement, allow additional care. Commenter thinks that this is a reasonable approach, an approach that would get people the care they need, especially</p>	<p>Kristine Shultz California Chiropractic Association August 23, 2006 Oral Comment</p>	<p>Disagree. See, Response No. 7—Adoption of Supplemental Guidelines.</p>	<p>None.</p>

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	<p>considering there is already a 24-visit cap on chiropractic care.</p> <p>Commenter recommends that the three members of the advisory committee appointed at the discretion of the Medical Director and the three additional members who serve as content experts should not have ties to the workers' compensation industry.</p> <p>Commenter states that the California Medical Association would like to see more physicians on the advisory committee, but she has concerns about it being overly focused towards allopathic medicine.</p> <p>Commenter further states that although randomized control studies are designated the highest level of evidence, she thinks that the meta-analyses of randomized control studies should be the highest level of evidence because benefit analysis is a review of those randomized control studies that take it through a process of throwing out the studies that are not appropriate and are not scientifically rigid.</p>		<p>Disagree. The DWC wants the latitude to select physicians who are well versed in evidenced-based and are experts in their fields, regardless of whether they have ties to workers' compensation industry.</p> <p>Agree in part. See, Response No. 13—Composition of Medical Evidence Evaluation Advisory Committee.</p> <p>Disagree. See, Response No. 12—ACOEM's Criteria Used to Rate Randomized Controlled Trials and Strength of Evidence Ratings.</p>	<p>None.</p> <p>Section 9792.23(a)(2) has been amended to add eight more members to the medical evidence evaluation advisory committee.</p> <p>None.</p>
Sections 9792.20-9792.23	<p>Commenter states that she is the President of the United California Practitioners of Chinese Medicine, and that they have 400 licensed acupuncturists practicing in the Bay Area, 10,000 in California. Commenter describes at length her experience in providing acupuncture medical treatment to injured workers after the reform legislation. Commenter states that most of her requests for treatment are denied.</p>	<p>Rona Ma, President United California Practitioners of Chinese Medicine August 23, 2006 Oral Comment</p>	<p>Agree in part. See, Response No. 14—Acupuncture Medical Treatment Guidelines.</p>	<p>New proposed Section 9792.21(a)(2) sets forth the Acupuncture Medical Treatment Guidelines as set forth above.</p>

Medical Treatment Utilization Schedule	RULEMAKING COMMENTS ORAL TESTIMONY GIVEN AT AUGUST 23, 2006 HEARING	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Sections 9792.20-9792.23	<p>Commenter testified at length regarding her industrial injury and receiving denial of acupuncture medical treatment based on the ACOEM Practice Guidelines. Commenter requested that the MTUS include acupuncture treatment as it has helped her.</p>	<p>Rosie Zamora Injured Worker August 23, 2006 Oral Comment</p>	<p>Agree in part. See, Response No. 14—Acupuncture Medical Treatment Guidelines.</p>	<p>New proposed Section 9792.21(a)(2) sets forth the Acupuncture Medical Treatment Guidelines as set forth above.</p>
Sections 9792.20-9792.23	<p>Commenter testified at length about her industrial injury of August of 1996, and about delays in her request for surgery, eventual surgery, and other conditions.</p> <p>Commenter states that her doctor recommended acupuncture, and it has worked.</p> <p>Commenter questions why her requests for medical treatment have to be evaluated under the ACOEM Practice Guidelines.</p> <p>Commenter states that she facilitates a chronic pain group, and members who have had their case settled for years are having problems obtaining care. Commenter believes that the ACOEM Guidelines and the whole workers' compensation system need help, and she is willing to help.</p>	<p>Debra Harris Injured Worker August 23, 2006 Oral Comment</p>	<p>Disagree. Comment does not address the substance of the regulations. However, the adoption of the MTUS is required by the statute, and the philosophy of ACOEM is to give the best possible care early in the course of an injury to prevent chronicity when ever possible. Furthermore, the ACOEM Practice Guidelines does address chronic conditions. See, response No. 11—Chronic Conditions. See also Response No. 14—Acupuncture Medical Treatment Guidelines.</p>	<p>New proposed Section 9792.21(a)(2) sets forth the Acupuncture Medical Treatment Guidelines as set forth above.</p>
Sections 9792.20-9792.23	<p>Commenter indicates that problems with provision of acupuncture medical treatment were identified over two years ago, and were recognized by the Administrative Director, RAND and CHSWC. Commenter further states that RAND and CHSWC made various recommendations and suggestions on what could be done to solve some of these problems.</p> <p>Commenter indicates that he is one of the</p>	<p>Richard Esquivel Licensed Acupuncturist August 23, 2006 Oral Comment</p>	<p>Agree in part. See, Response No. 14—Acupuncture Medical Treatment Guidelines. Disagree with comment stating the ACOEM Practice Guidelines do not apply to chronic conditions. See, response No. 11—Chronic Conditions. See also Response No. 7—Adoption of Supplemental Guidelines.</p>	<p>New proposed Section 9792.21(a)(2) sets forth the Acupuncture Medical Treatment Guidelines as set forth above.</p>

Medical Treatment Utilization Schedule	RULEMAKING COMMENTS ORAL TESTIMONY GIVEN AT AUGUST 23, 2006 HEARING	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>editors of the Acupuncture and Electroacupuncture Evidence-Based Treatment Guidelines, and states that he spent a lot of time and put a lot of work into the development of the guidelines. In this regard, commenter objects to the ISOR when it states that no mechanism has been identified for merging the contradictory recommendations in the guidelines, thus adoption of other guidelines will affect the presumption of correctness on the issue of extent and scope of medical treatment of the ACOEM Guidelines. He believes this was the task that the Administrative Director's office was charged with. Commenter believes that the Administrative Director has taken too long to resolve what he believes is the acupuncture problem.</p> <p>Commenter supports CHSWC's recommendation of establishing a guideline and an authorization process for modalities such as acupuncture, physical therapy, and chiropractic treatment. The prior authorization process would allow a short course of treatment, for example six treatments, to assess the therapeutic benefit.</p> <p>Commenter objects to the AD incorporating the ACOEM Practice Guidelines into the MTUS and applying them to chronic conditions. Commenter opines that the ACOEM Practice Guidelines are a failure at addressing both acute and chronic conditions. Commenter makes references to portions of ACOEM and argues that ACOEM does not apply to chronic conditions.</p>			

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Sections 9792.20-9792.23	<p>Commenter is the author of "Your Rights. What Employers Do Not Want You To Know." She is also an injured worker.</p> <p>Commenter testified at length about her industrial injury in February, 2005, about her experience with the insurance company, the pain she endured, the tests she took, and the discovery through the testing that she had a serious non-industrial condition which need immediate care.</p> <p>Commenter testified that while she was at home fighting the insurance company she wrote a book called "Your Rights. "What Employers Do Not Want You To Know."</p>	<p>Carol Denise Mitchell Injured Worker August 23, 2006 Oral Comment</p>	<p>Disagree. Comment does not address the substance of the proposed regulations.</p>	<p>None.</p>
Sections 9792.20-9792.23	<p>Commenter testified on behalf of the Council of Acupuncture and Oriental Medicine Associations, which includes about 10 organizations of different ethnic groups.</p> <p>Commenter testified acupuncture treatment has been provided to injured workers in the workers' compensation systems for almost 20 years, and many injured workers have benefited from this treatment, including returning to work. Commenter testified that her organization opposes the adoption of the ACOEM Practice Guideline as a permanent guideline, without addressing acupuncture.</p>	<p>Michelle Lau, President & Licensed Acupuncturist Council of Acupuncture and Oriental Medicine Associations August 23, 2006 Oral Comment</p>	<p>Agree in part. See, Response No. 14—Acupuncture Medical Treatment Guidelines.</p>	<p>New proposed Section 9792.21(a)(2) sets forth the Acupuncture Medical Treatment Guidelines as set forth above.</p>

Medical Treatment Utilization Schedule	RULEMAKING COMMENTS ORAL TESTIMONY GIVEN AT AUGUST 23, 2006 HEARING	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Sections 9792.20-9792.23	Commenter is an acupuncturist and the Supervisor of California U.S. Certified Acupuncture Association. Commenter references efforts by the Association to have acupuncture medical treatment as part of the law in California. Commenter testified at length that since the ACOEM Practice Guidelines became part of workers' compensation system in California, acupuncture treatment has been severely curtailed. Commenter states that about 50 percent of the patients her organization treats is for spinal pain, that some of these patients fully recover from their injuries, and they go back to work.	Kay Lam Acupuncture Doctor California U.S. Certified Acupuncture Association August 23, 2006 Oral Comment	Agree in part. See, Response No. 14—Acupuncture Medical Treatment Guidelines.	New proposed Section 9792.21(a)(2) sets forth the Acupuncture Medical Treatment Guidelines as set forth above.
Sections 9792.20-9792.23	Commenter testified he found acupuncture did more than just relieve his pain. The treatment greatly aided healing for him. He is an injured worker, permanently disabled from computer programming with a chronic, very slow healing repetitive strain injury. Commenter further stated that the workers' compensation system was created to contain litigation by treating workers. Commenter opines that before the reforms a couple of years ago, California workers' compensation was already more unfair than almost any other state.	Bill Kristy Injured Worker August 23, 2006 Oral Comment	Agree in part. See, Response No. 14—Acupuncture Medical Treatment Guidelines.	New proposed Section 9792.21(a)(2) sets forth the Acupuncture Medical Treatment Guidelines as set forth above.
Sections 9792.20-9792.23	Commenter is not an injured worker. She is a representative from the California Coalition for Workers Memorial Day, which is a pro-injured worker group. Commenter states that her group protested in front of the building half a dozen times in the last few months. Commenter objects to the presence of the California Highway Patrol during their protest	Nancy Keiler California Coalition for Workers Memorial Day August 23, 2006 Oral Comment	Disagree. The comments do not address the substance of the proposed regulations.	None.

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	on the date of this hearing.			
Sections 9792.20-9792.23	<p>Commenter is a licensed acupuncturist in California for 12 years. He is also a member of the California Acupuncture Association and the Korean Acupuncture Association in California. Commenter testified about two of his cases: One case was referred to him for pain management with acupuncture because she was highly allergic to any medication, and the acupuncture treatment worked. Commenter states that the 24 visit cap has affected this case. Her treatment was denied through utilization review</p> <p>His second case is an Oakland Fire Department employee that injured her foot and developed a neuroma. Commenter testified about long periods of wait for approval of treatment in this case, stating that the time of wait has increased from two weeks to eight weeks. And that the number of treatments has also been reduced from 12 visits to 6 visits. After the 6 visits, the referring physician requested another 12 visits, and three months have elapsed without response.</p>	<p>Young Chung Licensed Acupuncturist California Acupuncture Association/Korean Acupuncture Association in California August 23, 2006 Oral Comment</p>	<p>Agree in part. See, Response No. 14—Acupuncture Medical Treatment Guidelines. Disagree with the remaining comment. Both sections 9792.21(c), and 9792.22(b) prohibit “arbitrary” use of the ACOEM Practice Guidelines. This rulemaking does not relate to the Utilization Review Standards regulations which became effective on September 22, 2005. Moreover, the Utilization Review Enforcement regulations (Sections 9792.11 through 9792.15) are undergoing formal rulemaking process. The regulations assess penalties for violations of ACOEM applications. Regarding commenter’s comment on the 24 visit cap, limitations on chiropractic, occupational therapy and physical therapy visits are required by statute (Lab. Code, § 4604.5(d)(1)). These limitations are a policy matter for the legislature and objections should be addressed to the legislature.</p>	<p>New proposed Section 9792.21(a)(2) sets forth the Acupuncture Medical Treatment Guidelines as set forth above.</p>