REPORT OF THE BOARD OF TRUSTEES

B of T Report 12-JUN-21

Subject: Adopting the Use of the Most Recent and Updated Edition of the AMA Guides to the Evaluation of Permanent Impairment (Resolution 606-NOV-20)

Presented by: Russ Kridel, MD, Chair

Referred to: Reference Committee F

At the November 2020 Special Meeting, the House of Delegates referred Resolution 606, “Adopting the Use of the Most Recent and Updated Edition of the AMA Guides to the Evaluation of Permanent Impairment,” to the Board of Trustees. Resolution 606, introduced by the International Academy of Independent Medical Evaluators, Maryland, and the American Academy of Physical Medicine and Rehabilitation, asked:

That our American Medical Association support the adoption of the most current edition of the AMA Guides in all jurisdictions in order to provide fair and consistent impairment evaluations for patients and claimants including injured workers.

BACKGROUND OF THE AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT AND ADOPTION IN JURISDICTIONS

When a patient or worker suffers an injury or illness that results in permanent loss of function or of a body part, there is often a need to assess and quantify that loss in the form of an impairment rating. The workers’ compensation and property casualty insurance systems rely on medical experts to provide impartial, consistent impairment ratings as an input in determining compensation and benefits. For over 60 years, the AMA Guides® to the Evaluation of Permanent Impairment (AMA Guides) have provided a reliable, repeatable measurement framework for quantifying permanent impairment (PI) and have been the trusted gold standard by physicians, patients and the legal and regulatory communities. The AMA Guides describe evaluation of PI across all body systems, including chapters that address cardiovascular, musculoskeletal, mental health and more. PI claims are far more common than fatalities and far more costly than other claims. They represent up to 70% of the $56 billion workers’ compensation system.

In the United States, workers’ compensation is governed at the state level. Over 40 states and several countries recognize the AMA Guides as the authority on evaluating PI and require raters in their jurisdiction (i.e., physicians and other qualified health care professionals) to use the AMA Guides. The AMA Guides have a clearly defined role in the workers’ compensation landscape: to provide the best medical guidance in support of accurate and consistent impairment ratings. It is not the role of the AMA Guides to determine disability or compensation, which are social and economic decisions made by government authorities. In most states, an impairment rating calculated using the AMA Guides is only one factor in the determination of benefits for injured workers. Some states also use a Scheduled Loss system, which assigns dollar values to specific injuries such as loss of limb, digits or eyes. In the few states that use a pure “Scheduled Loss” approach the AMA Guides are not used.
In the past, updates to the AMA Guides were published at inconsistent intervals and typically involved significant changes to methodology. They were last updated in 2008 when the sixth edition was released. Some states have elected to continue use of outdated medicine in older editions of the AMA Guides as a matter of convenience, ease of use, or political / economic expedience, despite advances in the science reflected in updated editions. For example, in some jurisdictions where the plaintiffs’ bar was strong and well-organized, they resisted adoption of the sixth edition based on the belief that it lowered impairment ratings and thus compensation to their clients. The overall result manifests as a ‘patchwork quilt’ of states requiring use of different, and often outdated (up to 30 years), editions. Inconsistent application of the AMA Guides may increase the likelihood of inequitable compensation. Further, it creates unnecessary burden on physicians who evaluate impairment, especially those who practice in more than one jurisdiction.

This resolution is timely because the AMA has established a new editorial panel and process that support ongoing incremental improvement to the AMA Guides as new science becomes available. The first changes under this new process are scheduled for release at the beginning of April 2021. The panel and process are described later in this report, but historical context is valuable.

AMA MISSION AND POLICIES SUPPORT ADOPTION OF THE MOST CURRENT EDITION

Crucially, use of the most current medicine in the AMA Guides is aligned with the mission of the AMA, “to promote the art and science of medicine and the betterment of public health.” Existing policy “encourages the use of the Guides to the Evaluation of Permanent Impairment. The correct use of the Guides can facilitate prompt dispute resolution by providing a single, scientifically developed, uniform, and objective means of evaluating medical impairment” (H-365.981, “Workers’ Compensation”). This policy supports uniformity and use of evidence-based medicine, in alignment with the intent of Resolution 606.

Several AMA policies provide further support for the AMA continuing its role in promoting physicians’ and others’ reliance on current medical evidence. For example, AMA ethical policy governing medical testimony recommends that such testimony “reflects current scientific thought and standards of care that have gained acceptance among peers in the relevant field” (9.7.1, “Medical Testimony”). With respect to education and training, “Statements on HIV disease, including efficacy of experimental therapies, should be based only on current scientific and medical studies; [and the AMA] Encourages and will assist physicians in providing accurate and current information on the prevention and treatment of HIV infection for their patients and communities” (H-20.904, “HIV/AIDS Education and Training”). Current practices also extend to support for “The most current guidelines established by the American Academy of Pediatrics, American College of Cardiology, American College of Sports Medicine, and other appropriate medical specialty societies are used to determine eligibility for sports participation” (H-470.971, “Athletic Preparticipation Examinations for Adolescents”). Using current scientific standards also is encouraged for patient safety: “Physicians should stay abreast of the current state of knowledge regarding optimal prescribing through literature review, use of consultations with other physicians and pharmacists, participation in continuing medical education programs, and other means.” (H-120.968, “Medication (Drug) Errors in Hospitals.”)

House of Delegates Considerations

Testimony in support of referral at the November 2020 Special Meeting reflected a few key considerations: 1) concern that the resolution was advocating for practice inconsistent with state laws; 2) the potential for legal challenges in jurisdictions; and 3) the possible implementation burden. Each of these concerns is addressed below.
The intent of Resolution 606 is not to advocate for or require physicians to use the AMA Guides in ways that would violate state law. Rather, the resolution should be clarified to outline that the AMA, along with state societies, advocate at the state or jurisdictional level to assist legislatures and/or regulators in consistently adopting the most current medicine to evaluate impairment. The AMA has a long history of providing guidance and advocacy assistance to states and supporting the use of the most current edition of the AMA Guides is consistent with that history. The AMA will continue to work with states to understand obstacles and to advocate why relying on the most current medicine to evaluate impairment is beneficial.

The concern with legal challenges may stem from each state’s policy language. While some states’ legislation calls for automatic adoption of the most current edition of the AMA Guides, this approach has been challenged. This is a complex area that has been taken to several state supreme courts with mixed results. Litigation in Pennsylvania (Protz v. Workers’ Compensation Appeal Board (Derry Area School District)) was critical of how the state adopted impairment ratings that did not exist at the time the legislation was enacted, which constituted an inappropriate delegation of authority to the AMA. The AMA does not have any legal authority in a state, but the AMA can and does serve as an authority to encourage use of the most current medical standards in many contexts. The Kansas Supreme Court recently upheld a ruling that supported use of the most current edition of the AMA Guides, holding that the reference to the AMA Guides in the state statute does not make it unconstitutional because they are merely a guide and only serve as a starting point for an informed medical opinion.

SUPPORTING STATES’ AND JURISDICTIONS’ ADOPTION AND IMPLEMENTATION

In 2018 the AMA convened over 50 subject matter experts representing medicine, law, and government and received consistent feedback that the AMA Guides needed to be modernized in both content and delivery. Inconsistent adoption across jurisdictions was noted as a significant problem. Since then, the AMA has actively engaged with the stakeholder community. Through this engagement the AMA has found that obstacles rarely relate to the impairment rating described in the AMA Guides, and more frequently relate to different implementation challenges. To understand and address these challenges the AMA is collaborating with physicians, regulators, state and specialty medical societies.

Engaging the Community: AMA Guides Editorial Panel & Regulator Early Access Program

To incorporate the most current medicine the AMA appointed the AMA Guides Editorial Panel (Guides Panel) in 2019. With a transparent stakeholder-driven editorial process adapted from the approach used by the CPT® Editorial Panel, the Guides Panel considers proposed updates and revisions based on rigorous acceptance criteria, including supporting evidence, in a public forum and considers stakeholder feedback before approving any change proposal. The members and advisors serving on the Guides Panel bring diverse experiences and expertise across a broad range of medical topics. They were nominated by AMA Federation societies and other health care provider societies and selected by a team comprised of AMA management and physician leaders. Members do not advocate on behalf of their specialty or nominating organization.

To further understand and address implementation challenges the AMA convened the Regulator Early Access Program (EAP) – a quarterly focus group of executives and medical leaders from jurisdictional workers’ compensation authorities. Based in part on this group’s input the AMA has set an annual cadence for publication of Panel-approved updates. This update cycle allows for timely and incremental change that can be more easily reviewed by each jurisdiction prior to adoption. Significant changes are identified at least a year ahead of publication, enabling stakeholders to participate and prepare.
The AMA has also used the EAP to engage the regulatory community to better understand the benefits to the adoption of the most current edition of the AMA Guides. EAP members are helping the AMA to understand the different state legislative and regulatory needs to adopt the AMA Guides, which serves to inform the advocacy work proposed in Resolution 606. While seven states today require physicians to use updated content as it is released, many require legislative or regulatory action to achieve this. The AMA appreciates this dialogue and will continue to work with all key stakeholders in partnership with the Federation to support adoption of the most current edition of the AMA Guides.

Embracing Digital Delivery: Ed Hub and AMA Guides Digital

To meet the need for timely change education, the AMA is delivering change-focused modules with CME credit via the AMA Ed Hub™. In addition, targeted live virtual education sessions will be held to promote timely awareness among state workers’ compensation medical leaders.

Launched in December 2020, AMA Guides Digital (available at www.amaguidesdigital.com) provides an integrated, nimble platform that enables users to easily navigate the AMA Guides sixth edition, new panel-approved updates beginning in April 2021, and 20 years of associated AMA Guides Newsletter articles. Guides Digital streamlines annual releases and provides anywhere anytime access to subscribers. These implementation resources directly address stakeholder needs.

CONCLUSION

The AMA enhances its ability to achieve its mission by advocating for use of the most current medicine to evaluate impairment in the AMA Guides. Using the most current medicine is the most effective way to provide fair and consistent impairment rating of patients. The transparent process by which the AMA Guides are updated enables stakeholders to be involved and informed. Anticipated changes are announced and communicated well before they become available and effective. Innovation through delivering AMA Guides in a digital format with supporting digital education further supports jurisdictions’ adoption.

The intent of Resolution 606 is not to mandate that physicians use the most current AMA Guide regardless of state legal requirements. Rather, it supports the appropriate advocacy role and public health mission of the AMA. The referred resolution should be clarified to communicate that the AMA, along with state medical and specialty societies, advocate at the state or jurisdictional level to assist relevant government authorities in adopting the most current edition of the AMA Guides in support of the highest standards of medical science.

RECOMMENDATION

Therefore, the Board of Trustees recommends that the following policy be adopted in lieu of Resolution 606-Nov-20 and the remainder of this report be filed:

Support for the Use of the Most Recent and Updated Edition of the *AMA Guides to the Evaluation of Permanent Impairment*.

Our American Medical Association supports the adoption of the most current edition of the *AMA Guides to the Evaluation of Permanent Impairment* by all jurisdictions to provide fair and consistent impairment evaluations for patients and claimants including injured workers. (New HOD Policy)

Fiscal Note: Minimal costs, not to exceed $5,000.