

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

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

6
7 That our American Medical Association support the adoption of the most current edition of the
8 AMA Guides in all jurisdictions in order to provide fair and consistent impairment evaluations for
9 patients and claimants including injured workers.

10 11 BACKGROUND OF THE AMA GUIDES TO THE EVALUATION OF PERMANENT 12 IMPAIRMENT AND ADOPTION IN JURISDICTIONS

13
14 When a patient or worker suffers an injury or illness that results in permanent loss of function or of a
15 body part, there is often a need to assess and quantify that loss in the form of an impairment rating.
16 The workers’ compensation and property casualty insurance systems rely on medical experts to
17 provide impartial, consistent impairment ratings as an input in determining compensation and benefits.
18 For over 60 years, the *AMA Guides® to the Evaluation of Permanent Impairment* (AMA Guides) have
19 provided a reliable, repeatable measurement framework for quantifying permanent impairment (PI)
20 and have been the trusted gold standard by physicians, patients and the legal and regulatory
21 communities. The AMA Guides describe evaluation of PI across all body systems, including chapters
22 that address cardiovascular, musculoskeletal, mental health and more. PI claims are far more common
23 than fatalities and far more costly than other claims. They represent up to 70% of the \$56 billion
24 workers’ compensation system.

25
26 In the United States, workers’ compensation is governed at the state level. Over 40 states and several
27 countries recognize the AMA Guides as the authority on evaluating PI and require raters in their
28 jurisdiction (i.e., physicians and other qualified health care professionals) to use the AMA Guides. The
29 AMA Guides have a clearly defined role in the workers’ compensation landscape: to provide the best
30 medical guidance in support of accurate and consistent impairment ratings. It is not the role of the
31 AMA Guides to determine disability or compensation, which are social and economic decisions made
32 by government authorities. In most states, an impairment rating calculated using the AMA Guides is
33 only one factor in the determination of benefits for injured workers. Some states also use a Scheduled
34 Loss system, which assigns dollar values to specific injuries such as loss of limb, digits or eyes. In the
35 few states that use a pure “Scheduled Loss” approach the AMA Guides are not used.

1 In the past, updates to the AMA Guides were published at inconsistent intervals and typically involved
2 significant changes to methodology. They were last updated in 2008 when the sixth edition was
3 released. Some states have elected to continue use of outdated medicine in older editions of the AMA
4 Guides as a matter of convenience, ease of use, or political / economic expedience, despite advances in
5 the science reflected in updated editions. For example, in some jurisdictions where the plaintiffs' bar
6 was strong and well-organized, they resisted adoption of the sixth edition based on the belief that it
7 lowered impairment ratings and thus compensation to their clients. The overall result manifests as a
8 'patchwork quilt' of states requiring use of different, and often outdated (up to 30 years), editions.
9 Inconsistent application of the AMA Guides may increase the likelihood of inequitable compensation.
10 Further, it creates unnecessary burden on physicians who evaluate impairment, especially those who
11 practice in more than one jurisdiction.

12
13 This resolution is timely because the AMA has established a new editorial panel and process that
14 support ongoing incremental improvement to the AMA Guides as new science becomes available. The
15 first changes under this new process are scheduled for release at the beginning of April 2021. The
16 panel and process are described later in this report, but historical context is valuable.

17 18 AMA MISSION AND POLICIES SUPPORT ADOPTION OF THE MOST CURRENT EDITION

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

27
28 Several AMA policies provide further support for the AMA continuing its role in promoting
29 physicians' and others' reliance on current medical evidence. For example, AMA ethical policy
30 governing medical testimony recommends that such testimony "reflects current scientific thought and
31 standards of care that have gained acceptance among peers in the relevant field" (9.7.1, "Medical
32 Testimony"). With respect to education and training, "Statements on HIV disease, including efficacy
33 of experimental therapies, should be based only on current scientific and medical studies; [and the
34 AMA] Encourages and will assist physicians in providing accurate and current information on the
35 prevention and treatment of HIV infection for their patients and communities" (H-20.904, "HIV/AIDS
36 Education and Training"). Current practices also extend to support for "The most current guidelines
37 established by the American Academy of Pediatrics, American College of Cardiology, American
38 College of Sports Medicine, and other appropriate medical specialty societies are used to determine
39 eligibility for sports participation" (H-470.971, "Athletic Preparticipation Examinations for
40 Adolescents"). Using current scientific standards also is encouraged for patient safety: "Physicians
41 should stay abreast of the current state of knowledge regarding optimal prescribing through literature
42 review, use of consultations with other physicians and pharmacists, participation in continuing medical
43 education programs, and other means." (H-120.968, "Medication (Drug) Errors in Hospitals.")

44 45 *House of Delegates Considerations*

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47 Testimony in support of referral at the November 2020 Special Meeting reflected a few key
48 considerations: 1) concern that the resolution was advocating for practice inconsistent with state laws;
49 2) the potential for legal challenges in jurisdictions; and 3) the possible implementation burden. Each
50 of these concerns is addressed below.

1 The intent of Resolution 606 is not to advocate for or require physicians to use the AMA Guides in
2 ways that would violate state law. Rather, the resolution should be clarified to outline that the AMA,
3 along with state societies, advocate at the state or jurisdictional level to assist legislatures and/or
4 regulators in consistently adopting the most current medicine to evaluate impairment. The AMA has a
5 long history of providing guidance and advocacy assistance to states and supporting the use of the
6 most current edition of the AMA Guides is consistent with that history. The AMA will continue to
7 work with states to understand obstacles and to advocate why relying on the most current medicine to
8 evaluate impairment is beneficial.

9
10 The concern with legal challenges may stem from each state's policy language. While some states'
11 legislation calls for automatic adoption of the most current edition of the AMA Guides, this approach
12 has been challenged. This is a complex area that has been taken to several state supreme courts with
13 mixed results. Litigation in Pennsylvania (*Protz v. Workers' Compensation Appeal Board (Derry Area*
14 *School District)*) was critical of how the state adopted impairment ratings that did not exist at the time
15 the legislation was enacted, which constituted an inappropriate delegation of authority to the AMA.
16 The AMA does not have any legal authority in a state, but the AMA can and does serve as an authority
17 to encourage use of the most current medical standards in many contexts. The Kansas Supreme Court
18 recently upheld a ruling that supported use of the most current edition of the AMA Guides, holding
19 that the reference to the AMA Guides in the state statute does not make it unconstitutional because
20 they are merely a guide and only serve as a starting point for an informed medical opinion.

21 22 SUPPORTING STATES' AND JURISDICTIONS' ADOPTION AND IMPLEMENTATION

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

31 32 *Engaging the Community: AMA Guides Editorial Panel & Regulator Early Access Program*

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

43
44 To further understand and address implementation challenges the AMA convened the Regulator Early
45 Access Program (EAP) – a quarterly focus group of executives and medical leaders from jurisdictional
46 workers' compensation authorities. Based in part on this group's input the AMA has set an annual
47 cadence for publication of Panel-approved updates. This update cycle allows for timely and
48 incremental change that can be more easily reviewed by each jurisdiction prior to adoption. Significant
49 changes are identified at least a year ahead of publication, enabling stakeholders to participate and
50 prepare.

1 The AMA has also used the EAP to engage the regulatory community to better understand the benefits
2 to the adoption of the most current edition of the AMA Guides. EAP members are helping the AMA to
3 understand the different state legislative and regulatory needs to adopt the AMA Guides, which serves
4 to inform the advocacy work proposed in Resolution 606. While seven states today require physicians
5 to use updated content as it is released, many require legislative or regulatory action to achieve this.
6 The AMA appreciates this dialogue and will continue to work with all key stakeholders in partnership
7 with the Federation to support adoption of the most current edition of the AMA Guides.

8
9 *Embracing Digital Delivery: Ed Hub and AMA Guides Digital*

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

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

20
21 CONCLUSION

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

30
31 The intent of Resolution 606 is not to mandate that physicians use the most current AMA Guide
32 regardless of state legal requirements. Rather, it supports the appropriate advocacy role and public
33 health mission of the AMA. The referred resolution should be clarified to communicate that the AMA,
34 along with state medical and specialty societies, advocate at the state or jurisdictional level to assist
35 relevant government authorities in adopting the most current edition of the AMA Guides in support of
36 the highest standards of medical science.

37
38 RECOMMENDATION

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40 Therefore, the Board of Trustees recommends that the following policy be adopted in lieu of Resolution
41 606-Nov-20 and the remainder of this report be filed:

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

45
46 Our American Medical Association supports the adoption of the most current edition of the *AMA*
47 *Guides to the Evaluation of Permanent Impairment* by all jurisdictions to provide fair and
48 consistent impairment evaluations for patients and claimants including injured workers. (New
49 HOD Policy)

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