At the 2019 Annual Meeting, the House of Delegates (HOD) referred Resolution 017-A-19, "National Guidelines for Guardianship" to the Board of Trustees for report. Resolution 017-A-19, introduced by the Medical Student Section, asked that our American Medical Association (AMA) collaborate with relevant stakeholders to advocate for federal creation and adoption of national standards for guardianship programs, appropriate program funding measures, and quality control measures.

The reference committee heard limited testimony related to this resolution. One speaker lauded the intent of the resolution but expressed concern regarding the complexity of the issue and the need for further study. Testimony was also heard characterizing the resolution as too non-specific in its request. The reference committee recommended that Resolution 017-A-19 be referred.

The resolution raises vital issues regarding adult guardianship and protection of the elderly. This report presents the current federal and state regulatory framework for laws governing guardianship proceedings, the existing funding and support for programs and education, investigations of suspected elder abuse, and the agencies, associations and commissions that champion these issues. This report analyzes the existing body of AMA policy and Code of Medical Ethics opinions and evaluates the adequacy of existing governmental and non-governmental initiatives.

DISCUSSION

The resolution focused on the need to assure accountability, safety and transparency in the guardianship process in order to reduce the potential for abuse. Jurisdiction over the guardianship process is within the purview of each state’s court system and relevant state social services and administrative agencies. The obstacles for health care providers in seeking guidance in a patchwork of state laws are evident. However, numerous programs address these obstacles, and several are discussed here.

The “Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act”

The most ambitious and effective effort to address the inconsistency in state guardianship laws has been undertaken by the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission (the ULC). The ULC drafted the “Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act” (the Act). Drafted and recommended by the ULC for enactment in all states, the Act has been adopted in 49 states.
The Act provides states with non-partisan, well-conceived model legislation that brings consistency and stability to this critical area of state law. Jurisdiction of guardianship statutes requires clarity, and the Act addresses the problems of multiple jurisdictions, transfer across state lines, out of state recognition of proceedings and interstate enforcement. In addition, the Act facilitates monitoring of guardian relationships by requiring the court’s ability to monitor the guardian as a criterion when adjudicating a guardianship matter. The Act also establishes registration procedures to aid in notification and monitoring of abuse, facilitates cross-border court communication and authorizes a court to order an investigation in another state. Not only does the Act provide a national standard for guardianship programs, it also serves to reduce elder abuse by facilitating improved court monitoring and enforcement guidelines.

The Department of Justice and the American Bar Association Commission on Law and Aging

In 2001, the U.S. Department of Justice (Justice Department) funded the American Bar Association’s Commission on Law and Aging (the ABA Commission) to provide seed funding for a variety of initiatives. One such initiative was coordination of the development of Elder Abuse Fatality Review Teams (EAFRT). EAFRTs examine deaths of individuals that may be caused by or related to elder abuse for the purpose of identifying system gaps and improving victim services. Lessons learned from fatality review teams for child abuse and domestic violence victims have shown a positive impact in improving responses to victims. The Justice Department has further supported technical assistance to coordinate the development of EAFRTs and to publish an instruction manual for replication and implementation. With funding from the U.S. Administration on Aging, the ABA Commission subsequently funded additional EAFRTs through the National Center on Elder Abuse.

In 2017, the Justice Department awarded funding to the ABA Commission and several other organizations for numerous programs and research dedicated to the fight against elder abuse and financial exploitation. The funding has enabled the ABA Commission to build upon the foundational EAFRT model by expanding its initial capacity and evaluating the impact of EAFRTs on victim services. The ABA Commission is currently collaborating with the University of Texas Health Science Center to lead program evaluation activities, establish an expert panel, facilitate information sharing, develop conference presentations and webinars and disseminate products and findings and publish.

By illustration, the ABA Commission’s accomplishments in guardianship issues just for the 2019 calendar year included online training for guardians, developing of an annual state guardianship legislative update, collaborating on numerous webinars on guardianship, and working on projects with state stakeholders in Oregon, Florida, and New York to drive changes in guardianship reform. In addition, the ABA Commission on Law and Aging supports a resource and research library providing comprehensive coverage of standards and guidelines for guardianship matters.

The “Elder Justice Act”

Enacted as part of the Patient Protection and Affordable Care Act, the Elder Justice Act (EJA) establishes national leadership in the Office of the Secretary of Health and Human Services in the form of an Elder Justice Coordinating Council and Advisory Board. This was the first piece of federal legislation passed to authorize a specific source of federal funds to address elder abuse, neglect and exploitation. The EJA authorizes grants to support improvements in Adult Protective Services, Long-Term Care Ombudsman programs, state survey agencies for Medicare and Medicaid, and grants for the establishment of forensic centers. The EJA also provides funding for
programs to promote elder justice through the enhancement of long-term care, and evaluation of elder justice programs.

AMA POLICY

AMA has an extensive body of policy addressing elder mistreatment, the health care costs of violence and abuse, and preventing, identifying and treating abuse. AMA Code of Ethics Opinion 8.10, “Preventing, Identifying and Treating Violence and Abuse,” was issued in 2008 and most recently modified in 2017. The opinion informs of the physician’s ethical obligation to take appropriate action to avert harm caused by violence and abuse. Physicians are charged with numerous responsibilities regarding diagnosing abuse, knowledge of community and health resources, prevention measures, familiarity with reporting obligations, advocating for training in medical education, providing leadership in raising awareness, and supporting research efforts in this area.

House of Delegates Policy H-515.961, “Elder Mistreatment,” was last modified in 2018 and recognizes elder mistreatment as a pervasive public health issue that requires an organized effort from the medical community to improve recognition and treatment. The policy further advocates for collaboration between the medical team, social services, law enforcement, and the legal system to develop appropriate interventions and evaluation of those interventions. House of Delegates Policy D-515.984, “Health Care Costs of Violence and Abuse Across the Lifespan,” also last modified in 2018, encourages various national agencies to continue to study, conduct research on the cost savings resulting from interventions and to increase funding for research on the impact and costs of elder mistreatment.

CONCLUSION

Your Board recognizes the concerns expressed by those who promulgated Resolution 017-A-19. However, we note that AMA has an established and comprehensive body of policy on the matter. Moreover, several federal initiatives address the resolution’s core concerns. The Affordable Care Act, specifically, the Elder Justice Act, created federal leadership and established programs to promote elder justice. The Uniform Law Commission has enacted model guardianship legislation that has been adopted by 49 states. The American Bar Association Commission on Law and Aging has championed the cause for elder justice for forty years. The Department of Justice and other federal agencies provide funding, and numerous agencies, professional associations, academic medical centers and social service organizations continue to develop initiatives, and research outcomes and effectiveness.

RECOMMENDATIONS

Your Board of Trustees recommends that the following be adopted in lieu of Resolution 17-A-19, and the remainder of this report be filed:


2. That our AMA support initiatives by the American Bar Association Commission on Law and Aging and other associations and agencies of the federal government to address elder abuse and to ensure consistent protection of elders’ rights in all states. (Directive to Take Action)
AMA POLICY

E-8.10 Preventing, Identifying and Treating Violence and Abuse. All patients may be at risk for interpersonal violence and abuse, which may adversely affect their health or ability to adhere to medical recommendations. In light of their obligation to promote the well-being of patients, physicians have an ethical obligation to take appropriate action to avert the harms caused by violence and abuse. To protect patients’ well-being, physicians individually should:
(a) Become familiar with: (i) how to detect violence or abuse, including cultural variations in response to abuse; (ii) community and health resources available to abused or vulnerable persons; (iii) public health measures that are effective in preventing violence and abuse; (iv) legal requirements for reporting violence or abuse.
(b) Consider abuse as a possible factor in the presentation of medical complaints. (c) Routinely inquire about physical, sexual, and psychological abuse as part of the medical history. (d) Not allow diagnosis or treatment to be influenced by misconceptions about abuse, including beliefs that abuse is rare, does not occur in “normal” families, is a private matter best resolved without outside interference, or is caused by victims’ own actions. (e) Treat the immediate symptoms and sequelae of violence and abuse and provide ongoing care for patients to address long-term consequences that may arise from being exposed to violence and abuse. (f) Discuss any suspicion of abuse sensitively with the patient, whether or not reporting is legally mandated, and direct the patient to appropriate community resources. (g) Report suspected violence and abuse in keeping with applicable requirements. Before doing so, physicians should: (i) inform patients about requirements to report; (ii) obtain the patient’s informed consent when reporting is not required by law. Exceptions can be made if a physician reasonably believes that a patient’s refusal to authorize reporting is coerced and therefore does not constitute a valid informed treatment decision. (h) Protect patient privacy when reporting by disclosing only the minimum necessary information. Collectively, physicians should: (i) Advocate for comprehensive training in matters pertaining to violence and abuse across the continuum of professional education. (j) Provide leadership in raising awareness about the need to assess and identify signs of abuse, including advocating for guidelines and policies to reduce the volume of unidentified cases and help ensure that all patients are appropriately assessed. (k) Advocate for mechanisms to direct physicians to community or private resources that might be available to aid their patients. (l) Support research in the prevention of violence and abuse and collaborate with public health and community organizations to reduce violence and abuse. (m) Advocate for change in mandatory reporting laws if evidence indicates that such reporting is not in the best interests of patients.

H-515.961 Elder Mistreatment
Our AMA recognizes: (1) elder mistreatment as a serious and pervasive public health problem that requires an organized effort from physicians and all medical professionals to improve the timely recognition and provision of clinical care in vulnerable elders who experience mistreatment; and (2) the importance of an interdisciplinary and collaborative approach to this issue, and encourage states to bring together teams with representatives from medicine, nursing, social work, adult protective services (APS), criminal and civil law, and law enforcement to develop appropriate interventions and evaluate their effectiveness.

D-515.984 Health Care Costs of Violence and Abuse Across the Lifespan.
1. Our AMA urges the National Academies of Sciences, Engineering, and Medicine to continue to study the impact and health care costs of violence and abuse across the lifespan. 2. Our AMA encourages the National Institutes of Health, the Agency for Healthcare Research and Quality, and the Centers for Disease Control and Prevention to conduct research on the cost savings resulting from health interventions on violence and abuse. 3. Our AMA encourages the appropriate federal agencies to increase funding for research on the impact and health care costs of elder mistreatment.