WORKERS' COMPENPENSATION (C) TASK FORCE

Workers' Compensation (C) Task Force Nov. 17, 2024, Minutes
Workers' Compensation (C) Task Force Oct. 23, 2024, Minutes (Attachment One)
Task Force 2025 Proposed Charges (Attachment One-A)

Draft Pending Adoption

Draft: 11/25/24

Workers' Compensation (C) Task Force
Denver, Colorado
November 17, 2024

The Workers' Compensation (C) Task Force met in Denver, CO, Nov. 17, 2024. The following Task Force members participated: Alan McClain, Chair (AR); John F. King, Vice Chair, represented by Steve Manders (GA); Lori K. Wing-Heier represented by Sian Ng-Ashcraft (AK); Mark Fowler represented by Jimmy Gunn (AL); Barbara D. Richardson (AZ); Ricardo Lara represented by Mitra Sanandajifar (CA); Gordon I. Ito represented by Jerry Bump (HI); Doug Ommen represented by Mathew Cunningham (IA); Dean L. Cameron represented by Randy Pipal (ID): Vicki Schmidt represented by Craig VanAalst (KS); Sharon P. Clark represented by Shawn Boggs (KY); James J. Donelon represented by Chuck Myers (LA); Michael T. Calijouw represented by Jackie Horigan (MA); Timothy N. Schott represented by Sandra Darby (ME); Grace Arnold represented by Phil Vigliaturo (MN); Chlora Lindley-Myers represented by Jo LeDuc (MO); Glen Mulready represented by Kim Hunter (OK); Andrew R. Stolfi represented by Brian Fjeldheim (OR); Michael Humphreys represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Michael Wise represented by Karl Bitzky (SC); Larry D. Dieter represented by Tony Dorschner (SD); Kevin Gaffney represented by Rosemary Raszka (VT).

1. Adopted its Oct. 23 and Summer National Meeting Minutes

Commissioner McClain said the Task Force conducted an e-vote that concluded Oct. 23 to adopt its 2025 proposed charges. The motion passed.

Darby made a motion, seconded by Vigliaturo, to adopt the Task Force's Oct. 23 (Attachment One) and Aug. 8 (*see NAIC Proceedings – Summer 2024, Workers' Compensation (C) Task Force)* minutes. The motion passed unanimously.

2. Heard a Presentation from the AMA on its Updated Impairment Guides

Commissioner McClain said he comes from a workers' compensation background and used the American Medical Association (AMA) Guides for rating impairments when handling claims. He said that while the workers' compensation market is stable, it has not always been. Commissioner McClain said having some objective measurements like the AMA Guides helped stabilize the system.

Ken Eichler (AMA) said the AMA has been working with workers' compensation commissioners across the U.S. The AMA Guides are used both domestically and internationally. He said he has been working in insurance since the 1990s and owned an independent medical evaluation (IME) company in New York when there was no licensure for IME companies, so he became a multi-line adjuster licensed in nine lines of insurance.

Dr. J. Douglas Martin (AMA) said he has been a practicing occupational medicine doctor for the past 30 years and has been closely involved with the elements of the AMA Guides from the perspective of reviewing, editing, authoring, and teaching for most of his career. He said he was the past president of the American Academy of Disability Evaluating Physicians (AADEP) and the past president of the American College of Occupational Environmental Medicine (ACOEM).

Eichler said the AMA followed a transparent process while developing the Guides. He said the AMA has majorly shifted its focus over the last few years from being a compliance organization to a service organization. Eichler said the AMA also has a credentialing process. He said the AMA is a powerful ally for physicians regarding patient care, as it represents physicians and those they serve. Part of the AMA's goal is to remove the obstacles that

interfere with patient care while leading the charge to confront public health crises, hoping to drive the future of medicine.

Eichler said the AMA Guides are used in almost every jurisdiction in the U.S. Some states use multiple versions of the guidelines, while others use the most current version. The most current version of the AMA Guides is the sixth edition, and it is used in states either by regulation or legislation. The sixth edition of the AMA Guides is used in Alaska, Arizona, the District of Columbia, Illinois, Indiana, Louisiana, Massachusetts, New Mexico, Oklahoma, Pennsylvania, Tennessee, and Wyoming. It is important to note that Tennessee uses the guides based on the date of injury.

Eichler said there was a case in Pennsylvania in 2017, *Protz v. Workers Compensation Appeals Board*, in which the Supreme Court of Pennsylvania found that the General Assembly's delegation of authority to the AMA to establish criteria for evaluating permanent impairment was unconstitutional. The outcome of the case made states sensitive to the fact that new AMA Guides must be properly adopted and promulgated.

Eichler said that by engaging with the community of practice, the AMA Guides Editorial Panel process now incorporates: 1) the best available science and evidence-based medicine; 2) the reflection of medical advances and new insights related to impairment; 3) assessment tools to provide a rigorous methodology; and 4) fair, consistent, and reproducible evaluation processes. He said it is important to note that in many jurisdictions, physicians have and still use methodologies to do impairment ratings that they would not use in evaluating or treating their own patients. Physicians use some of the older methodologies to do ratings because the state uses older versions of the AMA Guides.

Eichler said the AMA Guides are an assessment tool that provides evaluation processes. He said the impairment rating is one component of determining compensation, whether the claim is due to an auto accident or a workers' compensation claim. Eichler said the use and application of the guides is a jurisdictional matter.

Dr. Martin said it is important to understand what the AMA did by assembling the guide's editorial panel. He said that he and his co-chair wanted a transparent process. Dr. Martin said all the stakeholders were involved in the revision process. He said the panel is responsible for creating, revising, and updating the impairment ratings and applicable guidelines for fair and equitable permanent impairment ratings. Dr. Martin said the rapid change in medicine and medical science necessitates rapidly updating processes.

Dr. Martin said the editorial panel accepted a proposal to update the mental and behavioral health chapter. This was necessitated by the fact that the American Psychological Association (APA) and the Psychiatric Association (PA) removed the "global assessment of functioning" (GAF) scale from their nomenclature, which was used in the sixth edition's behavioral health chapter.

Dr. Martin said that in 2022, some foundational and principal items needed changing in the first two chapters. He said the first big undertaking was in 2023 in the chapter on the nervous system. This chapter needed medical updates for traumatic brain injuries (TBIs), seizure disorders, and spinal cord trauma to reflect scientific advances.

Dr. Martin said the muscular-skeletal system updates for the upper limb, lower limb, and spine were recently adopted and implemented in 2024. He said the sixth edition of 2008 principles were maintained as a baseline to start the editing process. Dr. Martin said the sixth edition incorporated a change to a diagnosis-based or diagnosis-driven impairment rating process, which differed from the guides' previous editions. He said the science in the newest guides is the best way to analyze and evaluate impairments.

Dr. Martin said the editorial team needed to gather feedback from the various stakeholders for consideration and initiate some subcommittees. One of the things that became clear in the process of looking at the muscular-

skeletal system chapters was that they needed to be updated in tandem. The foundational principles, background information, and major rules followed needed to be consistent across those three chapters. The focus of the changes is to look at the objective measures of functional loss, as the foundational concepts have not changed.

Dr. Martin said the editorial team opened the musculoskeletal development process and began accepting applications in the summer of 2023. This section was opened for public comment and review. He said the guide's editorial panel meets monthly or sometimes bi-monthly. The stakeholders are invited to the table and given the opportunity to provide input, testimony, feedback, etc. Initially, there were 69 different reviews with multiple comments. The editorial team discussed this in December 2023.

Dr. Martin said the editorial team then moved to the components of vascular abnormalities, amputation, and elbow and hip diagnoses, which they tacked in February 2024. The editorial team then moved to the spine area for those diagnosis-based impairment tables. This section went through the same processes as the musculoskeletal development process.

Dr. Martin said improving intra-rater reliability is a foundational driving principle. He said that in previous editions of the guides, certain situations allowed for disagreements between physicians regarding numerical values that did not make sense. The editorial team wanted to ensure the process improved by allowing the injured party to go to other physicians. The impairment rating would remain the same regardless of the physician performing the evaluation.

Dr. Martin said the editorial team decided to maintain the international classification of the function model. This gets at the diagnosis-based construct or approach. The editorial team maintained the sixth edition printed book impairment values as anchors, which was important as stakeholders provided feedback that the values for the various diagnoses remain neutral.

Dr. Martin said the editorial team maintained the importance of obtaining a clinical history, performing the relevant physical examination, and examining the various clinical studies within that evaluation process. He said the difference in the 2024 version is that the clinical history, physical examination, and clinical studies within the diagnostic grow so that the physician does not have to go to three different tables.

Dr. Martin said the musculoskeletal impairment rating steps include: 1) confirming a clinically relevant diagnosis; 2) confirming maximum medical improvement; 3) identifying the relevant diagnosis-based impairment table; 4) determining the diagnostic row, class, grade, and impairment value; and 5) following guidelines for report documentation and jurisdictional requirements.

Dr. Martin said the diagnosis row is based on the impairment approach from the 2008 edition, but it has now been designed to standardize and simplify the diagnosis impairment rating process. The physician no longer has to use multiple tables on multiple pages to find the impairment rating value. This standardized approach improves content validity, intra-rater and inter-rater reliability, and agreement to get the best impairment rating available for the patient based on a confirmed and clinically relevant diagnosis at the point of maximum medical improvement.

Dr. Martin said the physical evaluation component focuses on objectively verified anatomical or physiological findings. The process can include a direct examination, a review of findings recorded in the medical records, or both. The purpose of the physical evaluation is to evaluate the individual's physical state to detect those abnormalities or signs that may indicate an underlying condition or impairment.

Dr. Martin said the clinical studies must be relevant or pertinent and are pivotal in the diagnostic process for some conditions. This becomes important when dealing with joint injuries, fractures, or spinal conditions. It involves a

comprehensive evaluation of the images and the reports from a variety of diagnostic tools, which may include laboratory tests or electrodiagnostic studies, and the evaluator needs to analyze these results again, obtaining the objective information from those tests that aid in supporting or refining the patient's diagnosis, ensuring a robust assessment of the clinical presentation.

Dr. Martin said the new 2024 version of the guidelines is web-based. Web-based processes have advantages, including portability, the frequency of updates, and ease of use. Additionally, he said there was no difference between the prior guides concerning the numerical values of impairment ratings between the two versions of the AMA Guides.

Dr. Martin said all system stakeholders, including injured parties, employers, medical professionals, legal representatives, insurers, state insurance regulators, legislators, and policymakers, benefit from the AMA Guides updates, which include consistent and accurate impairment evaluations. The AMA Guides updates provide increased reliability, reflecting the current medical best practices, methodologies, and technologies. The updates also offer enhancements that give a more structured approach to confirming a clinically relevant diagnosis.

Dr. Martin said evaluators can accurately assign the correct diagnostic row, class, grade, and impairment value in the diagnosis-based impairment table by thoroughly assessing the specific individual elements derived from the individual's clinical history, physical examination, and clinical studies. He said the updated systemic approach ensures reliable and meaningful assessments of an individual's condition and associated impairment ratings. Again, adopting and applying the AMA Guides is a jurisdictional matter.

Eichler said there is a specific difference between impairment and disability. Disability is one's ability to perform one's assigned work or any other work, while impairment is the physical measure of the function of a limb or body part. Eichler said an impairment is a snapshot in time. If it can be documented that an impairment rating is going down over time, the treatment is effective.

Information about AMA Guides Digital can be found at www.amaguidesdigital.com. The AMA Education Hub can be found at www.edhub.ama-assn.org/ama-guides-education.

A question in the chat asked how the numerical impairment values are maintained between the 2008 and 2024 versions while stating that the AMA has improved the rating reliability. Dr. Martin said the mean score when comparing the 2008 and 2024 guides is basically the same. He said the 2024 bell-shaped curve is much narrower than the 2008 curve, meaning you have more impairment ratings within the statistical standard deviation in the 2024 version than in the 2008 version.

Eichler said the National Council on Compensation Insurance (NCCI) is doing a study on the 2024 guide, and it is anticipated that the California Workers' Compensation Institute (CWCI) and a few other organizations will be conducting independent studies.

Grassel asked if the procedures for the AMA Guides were consistent and why some states were behind others in the adoption of the new guide. Eichler said the review process is relatively consistent. He said Tennessee is leading the charge, as it is forward-moving. Eichler said nearly all states using the most current version are engaging the objective review using staff internally with the agency as well as physicians in their community.

Commissioner McClain asked if pain was in the most current guidelines. Dr. Martin said the pain chapter was in the 2008 printed version. He said that, to date, the editorial panel has not received any requests for editorial changes. Dr. Martin said that some organizations are considering submitting changes to this in the future. He said that currently, the 2024 version remains the same for pain.

Commissioner McClain said he remembered pain and range of motion being an issue at one time, as range of motion might change daily. Dr. Martin said the updates to the 2024 guides do not focus on range of motion as much. He said it is still a considered value but not a significant situation that drives the impairment rating number as it did in previous editions. Dr. Martin said there is a science that validates how the individual range of motion can vary from one day to another.

Commissioner McClain said that if anyone on the Task Force had suggestions for future meetings, let him or NAIC staff know.

Having no further business, the Workers' Compensation (C) Task Force adjourned.

SharePoint/NAICSupportStaffHub/Member Meetings/C CMTE/2024 Fall/Worker's Comp Task Force/Minutes - WCTF - 2024 Fall National Meeting.docx

Draft: 10/24/24

Workers' Compensation (C) Task Force
E-Vote
October 23, 2024

The Workers' Compensation (C) Task Force conducted an e-vote that concluded Oct. 23, 2024. The following Task Force members participated: Alan McClain, Chair (AR); John F. King, Vice Chair, represented by Steve Manders (GA); Lori K. Wing-Heier represented by Sian Ng-Ashcraft (AK); Mark Fowler represented by Erick Wright (AL); Ricardo Lara represented by Mitra Sanandajifar (CA); Andrew N. Mais represented by George Bradner (CT); Doug Ommen represented by Mathew Cunningham (IA); Vicki Schmidt represented by Julie Holmes (KS); Sharon P. Clark (KY); Kevin P. Beagan represented by Jackie Horigan (MA); Robert L. Carey represented by Sandra Darby (ME); Grace Arnold represented by Tammy Lohmann (MN); Chlora Lindley-Myers (MO); Scott Kipper (NV); Glen Mulready (OK); Andrew R. Stolfi represented by TK Keen (OR); Michael Humphreys (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); and Michael Wise represented by Will Davis (SC).

1. Adopted its 2025 Proposed Charges

The Task Force considered adoption of its 2025 proposed charges (Attachment One-A). A majority of the Task Force members voted in favor of adopting its charges. The motion passed.

Having no further business, the Workers' Compensation (C) Task Force adjourned.

SharePoint/NAIC Support Staff Hub/Committees/C CMTE/2024 Fall/Worker's Comp Task Force/10_23_EVote Minutes – WCTF.docx

Draft: 10/24/24

Adopted by the Executive (EX) Committee and Plenary, Dec. 19, 2024
Adopted by the Property and Casualty (C) Committee, Nov. 19, 2024
Adopted by the Workers' Compensation (C) Task Force], Oct. 23, 2024

2025 Proposed Charges

WORKERS' COMPENSATION (C) TASK FORCE

The mission of the Workers' Compensation (C) Task Force is to study the nature and effectiveness of state approaches to workers' compensation and related issues, including, but not limited to: assigned risk plans; safety in the workplace; treatment of investment income in rating; occupational disease; cost containment; and the relevance of adopted NAIC model laws, regulations and/or guidelines pertaining to workers' compensation.

Ongoing Support of NAIC Programs, Products, or Services:

1. The **Workers' Compensation (C) Task Force** will:

   A. Oversee the activities of the NAIC/International Association of Industrial Accident Boards and Commissions (IAIABC) Joint (C) Working Group.

   B. Discuss issues with respect to advisory organizations, rating organizations, statistical agents, and insurance companies in the workers' compensation arena.

   C. Monitor the movement of business from the standard markets to the assigned risk pools. Alert state insurance department representatives if the growth of assigned risk pools changes dramatically.

   D. Follow workers' compensation issues regarding cannabis in coordination with the Cannabis Insurance (C) Working Group.

   E. Discuss issues affecting workers' compensation.

2. The **NAIC/International Association of Industrial Accident Boards and Commissions (IAIABC) Joint (C) Working Group** will:

   A. Study issues of mutual concern to state insurance regulators and the IAIABC. Review relevant IAIABC model laws and white papers and consider possible charges based on the Working Group's recommendations.

NAIC Support Staff: Sara Robben/Aaron Brandenburg