Medical Savings Accounts  
Don't Expect Medical Savings Accounts (MSAs) to dominate the health insurance market any time soon, concludes an Academy study released in October. However, as a result of the Academy's work on MSAs, you can expect the actuarial profession to be cited when issues debate them.

Medical savings accounts (MSAs) are individually owned accounts set up to pay unreimbursed medical expenses and would be offered in tandem with high-deductible insurance plans. The Academy report focuses on the marketplace impact of the most prominent MSA proposal before Congress, the Family Medical Savings and Health Account Act sponsored by House Ways and Means Chairman Bill Archer (R-Tex.). The report builds on an Academy monograph issued in May that examined MSA cost implications and plan design.

"We do not see a stampede to MSAs," said Edwin Hustead, chairman of the Academy MSA Work Group. "However, people with high incomes or younger people in good health might gravitate toward MSAs because of tax advantages and low cost," he added.

The Academy released its second MSA report, October 24 at two Washington, D.C. briefings as part of the profession's Forecast 2000 communications program. At the first briefing, Hustead and work group members Gary King, Peter Hendee, Mark Litow, and Toni Wildsmith discussed their findings with a group of Washington-based health policy analysts and insurance industry lobbyists.

The Academy group then met the media, taking questions from reporters representing the Dallas Morning News, Nation's Business, and Mother Jones magazine, among others. After the briefing, reporters from National Public Radio, the Wall Street Journal, and USA Today also contacted the Academy with questions for work group members.

The Academy's MSA work continues to attract media attention. (See November Update.) Hustead was a chief source for a November 6 Washington Post story, where he noted the difficulty of obtaining experience data for the study and challenged MSA advocates who assert that "everybody's going to be better off" under MSAs. "The young and healthy will be better off," Hustead said. "Those with large health bills will not."

Other media references: In a November 3 letter to the editor of the Wall Street Journal, Hustead rebutted inaccurate assertions about the Academy's first study that had appeared in an earlier WSJ article. New York Times correspondent Martin Gottlieb requested a copy of the Academy report by saying that "Everyone is pointing to it as the most authoritative study on MSAs to date." Opinion pieces in the Washington Times and National Underwriter also favorably cited the Academy's report.

On November 3 Hustead briefed congressional staff members in the Rayburn House Office Building. Hustead stressed that the Academy 네이터 did not sponsor nor opposed MSAs, but offered its report to provide lawmakers with the views of health actuaries who are experienced in health plan financing and design.

In conversation after the briefing, Joe Musker, health aide to Tennessee Republican Senator Bill Frist, thanked the Academy for its report and said he'd relied on the Academy's analysis when drafting Frist's own MSA legislation. Musker later sent the Frist bill to the Academy work group for its review.

Congress Adopts Academy Pension Reversion Changes

Senate and House conferees who wrangled over the 1996 federal budget reconciliation bill agree on at least one matter: They needed the Academy's help to draft a sound provision on pension reversions. The reversion proposal allows employers to more easily withdraw excess assets from their pension plans. In a last-minute maneuver in September, the House Ways and Means Committee added the provision to the budget bill without a hearing. Immediately after the Ways and Means vote, Academy Pension Committee Chairperson Ron Gebhardtsbauer wrote lawmakers urging them to redraft the proposal to better protect employees' benefits. (See October Update.)

Ways and Means Chairman Bill Archer then turned to the Academy for assistance in crafting a revised pension reversion plan. In a letter to Gebhardtsbauer, Archer requested that the Academy provide its views as the primary concern is the appropriate actuarial valuation and actuarial soundness of pension plans.

The Pension Committee's chief concern was the liability threshold that determined the amount of excess assets available for reversion. The original Ways and Means proposal defined excess assets using a formula based on the current value of liabilities. The Pension Committee suggested that the threshold for withdrawals be set at the greater of 120% of termination liability or the plan's accrued liability on the date of withdrawal.

By calculating liabilities according to their value at termination, the Academy group argued that the reversion proposal would provide adequate safeguards for the vast majority of pension plans.

The Academy's language was adopted by Ways and Means, and the final proposal won praise from the Pension Committee for strengthening pensions. In a November 3 letter to Archer, Gebhardtsbauer wrote that the "proposal adds flexibility to defined benefit plans, which could lead to creation and retention of these plans. Companies will be inclined to contribute more to the pension plan if they can recover excess assets sometime in the future."

On the Senate side, the Finance Committee passed a more restrictive reversion plan, which limited the use of withdrawn pension assets to employee benefits funding. The Finance Committee retained the Academy's liability threshold language. The full Senate dropped the reversion proposal, but it reappeared in the House-Senate conference committee.

In conference, a provision less favorable to the Academy was added. Under the Academy's recommendation, actuaries would determine the termination liability using assumptions based on reasonable expectations taking into account specific plan provisions, with Pension Benefit Guaranty Corporation (PBGC) assumptions as a safe harbor. The language that emerged from conference mandates use of the PBGC assumptions alone.

"Things happen fast in the 104th Congress, and with the pension reversion issue the Academy has proved it can keep pace," said Academy Pension Vice President Vince Amoroso. "The actuarial profession was able to act quickly to get its message to lawmakers, and the result is a proposal that is much more actuarially sound because of our involvement."

"I am disappointed, however, that the current bill requires actuaries to follow a one-size-fits-all approach to determine termination liability. This underscores the need to monitor and enforce our professional standards so that we can earn the respect of federal policy makers."

As the Update goes to press, the status of the pension reversion proposal—and the entire federal budget—is unresolved. The Senate version of the reversion plan was expected to be approved by both houses with a veto by President Clinton probable.
King and Gingrich Meet on Medicare

Solvency standards are needed for new arrangements to deliver health care services under proposed Medicare reform. That’s the message Academy of Medicine to the Speaker’s Capitol office.

Gingrich called the meeting to discuss provider-sponsored organizations (PSOs), physician-owned health care entities that will have an expanded role in providing services to the elderly and disabled under the Republican Medicare reform plan. Other participants in the high-level meeting included the presidents of the American Medical Association, Health Insurance Association of America, American Hospital Association, and the CEO of Humana Inc.

King’s message to the group was that PSOs should be subject to the same solvency standards as HMOs and insurance companies. Some PSO advocates argue that solvency standards for the new organizations should be less stringent. King pointed out that PSOs are not closed systems and would need sufficient resources to cover the risk represented by tertiary providers and seasonal variations in health spending.

King advised that, at a minimum, PSOs should be required to undergo annual audits and actuarial reviews. He noted that if solvency standards can be set lower for PSOs to participate in Medicare, standards can be set lower for HMOs and insurers.

In a November 8 letter to Gingrich, Academy Executive Director Wilson Wyatt restated the Academy’s view on solvency and offered assistance in developing standards. As of press time, laws to implement standards “are at best being delayed, such as one that falsely states or implies that individual accounts will be funded and maintained. A law that requires the participation of disingenuous people with vested interests,” Wyatt noted. He provided a list of additional laws that need to be evaluated, including the one that calls for a publicly funded guarantee fund for actuarial principles on minimizing cross-subsidization between geographic risk territories and providing for financial soundness. Section 904 establishes an “Independent Natural Disaster Insurance Board of Actuaries,” to review the plan of operation of the federal Natural Disaster Insurance Corporation and to approve premium rates established by the corporation. The Secretary of the Treasury would appoint the board, whose five members would be members of the Academy or the Casualty Actuarial Society and subject to Academy qualification standards.

New LTC Health Practice Note

Long-term care insurance is the latest topic covered by an Academy health practice note, joining eight others in the Academy State Health Committee’s series.

Practice notes offer informal guidance on complying with actuarial standards of practice. All nine notes were updated in November and are available free of charge to Academy members. If you ordered the January set, you’ll be receiving the January series. To order your first set, send new mailing labels (you’ll automatically be on the list for future sets) to the Academy’s Washington office, noting on your envelope your request for Health Practice Notes.

Member Report Is Academy First

This year, for the first time, the Academy has issued an annual report to its members. The report, submitted by Academy Executive Director Wilson Wyatt and President Jack T. Firestone, focuses on the Academy’s accomplishments in all practice areas and includes comments of prominent lawmakers on the Academy’s work.

Wyatt’s report to the members outlines the Academy’s new direction of greater involvement for the actuarial profession in the dialogue on public issues.

The 1995 Report to the Membership was mailed to all Academy members in late November. To obtain additional copies, fax your request to Chris Delos at 202-872-1948.

Brief Issued on Tax Reforms

Tax reform could spell trouble for pensions and other employee benefits, according to Academy Senior Pension Fellow Bob Heitzman. Heitzman analyzes the leading tax reform proposals, now before Congress in “Pensions in a Flat World,” an Academy issue brief released in October.

Fundamental reform of the tax system has found influential advocates in Washington. Most proposals are based on flat-rate or consumption taxes designed to increase the nation’s savings rate. Few analysts, however, have focused on the effect that sweeping changes would have on the nation’s private pension plans. In his issue brief, Heitzman examines the unintended consequences to the benefits industry and the nation—of eliminating tax incentives for pensions and benefits.

Heitzman’s issue brief has been distributed to all members of Congress and to influential tax analysts and consumer groups in Washington. To obtain your copy of “Pensions in a Flat World,” fax a request to Doreen Moaning at the Academy at 202-872-1948.

A DISSENTING VIEW

The Emperor’s Wardrobe

The opinions expressed below are not necessarily, nor even very likely to be, those of the Actuarial Standards Board (ASB). They are the opinions of this lame-duck ASB member, who wonders whether others in the profession agree.

My subject is actuarial standards of practice that are intended to guide the practicing actuary in complying with specific law or regulation. Compliance standards suggest the means whereby an actuary may both comply with the law and meet more stringent actuarial standards of practice based on generally accepted actuarial principles.

But what to do when law and principles conflict? Compliance standards generally provide that the actuary should follow the law, but disclose the conflict. But what if the law is in conflict with principles? What if there is a fatal flaw in terms of actuarial principles, and thus in its long-term consequences? Is it less than justice or the actuary can say, “I knew it was wrong, and I said so”? I think not, especially unless professional requirements are concerned.

A common argument put forth in support of compliance standards is, “If we don’t participate in the process, something worse will result.” And I must admit that a principled stand of opposition has serious consequences. Therefore, in cases where the conflict between law and principle is relatively minor, a compliance standard is often a good idea. I do believe, however, that the profession should not put its imprimatur on laws that are fatally flawed or that undermine the proper fulfillment of actuarial principles.

Should we write and enforce mandated compliance standards for such laws, knowing that it will not be necessarily, nor even very likely to be, necessary, or even very likely to be, those of the Actuarial Standards Board (ASB). They are the opinions of this lame-duck ASB member, who wonders whether others in the profession agree.

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John Montgomery, former chief actuary of the California Insurance Department, is the first recipient of the Robert J. Myers Public Service Award. Montgomery founded the NAIC’s Life and Health Actuarial Task Force in 1973 and chaired it as its chairman almost without interruption until his retirement in early 1995.

At the Academy Annual Meeting in October, Montgomery sat down with the Update's managing editor to discuss his career and the profession's role in regulation.

What was your proudest achievement at the NAIC? My work in creating the position of the valuation actuary, which has strengthened the role of the profession.

What about challenges? One continual challenge was working with elected insurance commissioners who come into office with an agenda that they try to rush through. Sound regulation can't be done that way.

How has the actuarial profession's role in regulation changed over the past 25 years? It's changed immensely—for the better—but we still have to battle against vested interests.

How is the profession viewed by the NAIC? Several years ago I started the joint committee of the Academy and the NAIC, which now includes the Actuarial Board for Counseling and Discipline. This has become a good forum for communication between regulators and the profession.

What about the Academy's recent work for the NAIC on issues such as risk-based capital? The Academy has worked very hard to get the risk-based capital formulas acceptable, but they are empirical formulas and will take some time to perfect. However it's going to be good for the industry in the long run.

What is the future of insurance regulation? Insurance is an ever-changing field, and regulation must always be able to adapt. Some actuaries would like to see no insurance regulation at all, but that would be a license to steal. Also, it wouldn't be good for the actuarial profession because it would backfire on us. I'm concerned it would cause people to think of us as supporting insurance companies' interests and not the public interest.

What can the profession do to strengthen its reputation with regulators and the public? We need more courses on ethics and professionalism in our educational process, and also more continuing education on professionalism issues. The Academy should take the lead in making sure that all actuaries take their professional responsibilities seriously.
Punitive Damages: A Concern to All

Court awards for punitive damages have been escalating recently. Actuaries should take note: Because the Annual Statement of Actuarial Opinion includes liabilities for claims resisted (line 2.5 of Exhibit 11, Part 1), we need to be concerned about punitive damage awards.

While it is unclear whether punitive damages resulting from claims should appear in Exhibit 11, valuation actuaries in today’s litigious climate should take certain precautions when preparing reserve certifications. At a minimum, an actuary should obtain verification that there are no resisted claims for which the company has an obligation to pay punitive damages. This verification should come from a knowledgeable company officer such as the legal counsel or claims department head.

If an outstanding punitive claim exists at year-end, a company must decide where to place the liability for this claim in the annual statement and the amount of the liability to be carried. No single answer exists for either of these two issues, except to state that both must be addressed.

Because it is impossible to predict whether a given resisted claim situation will result in a punitive damage award, it may be advisable to include a statement in the actuarial opinion explaining that "no provision has been made in Exhibit 11 for punitive damages, if any, for which the company is or may become liable except as noted below."

While this is a topic that deserves further discussion within the profession, it is unlikely that valuation actuaries will be given clear direction soon on handling punitive damages. For the moment, it remains up to the individual actuary to take the steps necessary to clarify the scope of such actuarial opinion.

—Jay M. Jaffe

Jaffe is President of Actuarial Enterprises, Ltd., in Highland Park.