

Individual Coverage

Chuck Bryan's article on professional liability issues ("Projections, Not Predictions," July/August 2005) is well done and deals with an important topic. But there's a liability issue of which I think most actuaries are unaware. It's related to the article but goes a step further.

In the past couple of years I've been paying attention to suits in which the actuary is named as an individual, as well as the actuary's employer. In talking with my attorney (who specializes in medical malpractice defense) I learned that it's not uncommon for practitioners to be named as individuals. I predict that we'll see more and more of that in future actuarial suits.

So why worry about being sued individually if your employer carries adequate professional liability insurance on itself and its employee/practitioners?

Because there are all kinds of examples outside the actuarial profession where suits arose between the employer and employee over contribution amounts and even over coverage issues. For example, you don't need to act in a fraudulent way in order to be accused of fraud. If you're accused of fraud and dishonesty, will your employer and its insurer defend you? If they do defend you, and you're found guilty, will the insurer and your employer seek reimbursement? Or what if your employer thinks you didn't follow its internal peer review procedures and decides not to defend you? In that case, the individual practitioner will end up defending himself and suing his employer over coverage.

The potential gaps in coverage aren't related solely to fraud and dishonesty. I'm told there are other situations in which the individual was forced to defend himself and then seek reimbursement from the employer's insurer. That could take years, and in the meantime it's your money that's being spent on lawyers.

My fear isn't just a result of my lawyer's advice. I also talked a little with another law firm in New York City. Both of them managed to scare the bejeebers out of me. I'm convinced that my personal assets are



significantly exposed, even though my employer apparently has a "zillion dollars" of protection on itself and me.

As a result, my wife and I are changing ownership of our Illinois real estate to ownership in the entirety. This change will at least protect those personal assets from a professional suit against me. We're considering putting some non-real-estate assets into an LLC. I'm also thinking about dropping all statutory opinions and any other opinion that I consider to be risky, especially when my opinion may be used by a third party.

I think the profession would benefit from a discussion of the individual risk that exists, even if the practitioner's employer is carrying a lot of coverage. I'd bet 90 percent of the actuaries haven't thought about that risk. I think individual practitioners need to be able to purchase professional liability coverage that's not necessarily excess, but rather a secondary coverage that wraps around the employer's coverage.

MIKE MILLER
MINOCQUA, WISC.

Chuck Bryan responds: Mike, I completely agree with every point made in your letter. In fact, right now there is the case of a very large insolvency where the company's independent auditor and the opining actuary are being sued as individuals. I'm so concerned that I, too, have given up opinion work on loss reserves and most work where there's a significant chance of litigation. Fundamentally, the actuarial fees don't include an adequate risk provision.

For the employee-employer case, the added difficulty is that if limits run out, the employee may not have sufficient limits to cover himself or herself. And there are some billion-dollar cases out there. In addition, there are stockholder suits against companies in which plaintiffs allege a reserve was set somewhat late.

What's the solution? My belief is that we need focused action now from the Academy on this very difficult issue. The "safe harbor" approach is feasible when combined with a vigorous defense mounted on behalf of the profession in those cases where any difference between the reserve and the runoff was a function of variable and limited information rather than error on the actuary's part. The Academy has a good plan that was developed by a task force. The job now is to implement that plan.

I suggest we aim at a request for immediate Academy attention through a letter signed by a number of prominent actuaries. The Academy has many high-priority issues, but this one is very important to the future of the profession. Meanwhile, it sounds as if you're protecting your financial assets rationally.

Second OACT

I read with interest the article by Robert Rosenblatt and Larry DeWitt titled "Future Gazing: The Role of Social Security's Chief Actuary" (July/August 2005) and have two concerns.

First, the article doesn't address either the early inclusion of Medicare in the responsibilities of the Social Security Administration or the later transfer of Medicare to the newly formed Health Care Financing Administration (HCFA), now the Centers for Medicare and Medicaid Services (CMS). And second, it oversimplifies by excluding from discussion the role of the chief actuary at CMS.

The history of the relationship between SSA and CMS is as follows: In 1965, when Congress passed legislation establishing the Medicare and Medicaid programs, responsibility for administering them was entrusted to the Department of Health, Education, and Welfare

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than those confronting Social Security.

—the forerunner of the current Department of Health and Human Services. Until 1977, SSA managed the Medicare program, and the Social Rehabilitation Service (SRS) managed the Medicaid program. The duties were then transferred from SSA and SRS to HCFA, renamed CMS in 2001. Responsibility for administering both health programs was for the first time entrusted to one organization.

Until 1978, only one Office of the Actuary existed—the Office of the Chief Actuary at SSA. This meant that for the first year of HCFA's existence (from 1977 to 1978), cost estimates for Medicare, as well as for the Social Security program, continued to be prepared in that office. Then, in 1978, HCFA's Office of the Actuary was created, and the Medicare actuarial staff transferred from SSA to the new organization. This new OACT (origi-

nally called the Office of Financial and Actuarial Analysis) worked independently of SSA and assumed the responsibility for preparing all cost projections for both the Medicare and Medicaid programs and the National Health Accounts.

The duties of OACT have steadily increased over the years. Recent significant additions to the office's workload include preparing projections for the State Children's Health Insurance Program (which was established by the Balanced Budget Act of 1997) and developing estimates for the new prescription drug benefit (established by the Medicare Modernization Act of 2003 and scheduled to begin in 2006).

In addition, OACT is responsible for reviewing the actuarial bid submissions for all the private health plans that contract with Medicare. Since OACT's inception, there have been only two Medi-

care/Medicaid chief actuaries: Guy King (1978–1994) and Rick Foster (1995–present). The office currently employs 80 staff members (as opposed to 52 in SSA's Office of the Chief Actuary) and comprises actuaries, economists, statisticians, and other staff.

According to the trustees of the Social Security and Medicare trust funds, Medicare's financial difficulties are more pressing and severe than those confronting Social Security. Medicare's annual costs, they report, are currently 2.6 percent of GDP (or about 60 percent of Social Security's, which represent 4.3 percent of GDP). But annual costs for Medicare are projected to surpass Social Security expenditures in 2024 and to reach almost 14 percent of GDP in 2079 (compared with 6.4 percent of GDP in 2079 for Social Security).

A truly accurate and comprehensive account of the evolving role of the SSA chief actuary—and the challenges that social service programs present for actuarial science—should consider the full scope of these programs.

A. HAEWORTH ROBERTSON
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Renew TRIA

Thank you for the editorial "Bad Data" in the recent *Contingencies*. I agree with you on the need for the United States to emulate the European federal approach or something like it, or at the very least to renew TRIA. I'm a casualty actuary supporting a risk management book of primarily workers' compensation business. I wanted to point out that under workers' compensation law, insurers are required to provide terrorism coverage with no policy limits. Also, I would argue that at least the nuclear, biological, chemical, and radiological terrorism perils are uninsurable by definition—thus the need for a federal role in reinsuring these terrorism perils.

WILLIAM J. MILLER
PHILADELPHIA

A Higher Standard

The article in the September/October issue of *Contingencies* (“A Seat at the Table” by Holly Kwiatkowski) contains a not-so-subtle slap at trade organizations that lobby to advance their own interest, sometimes at the expense of the public good. Yet it contains an explicit instance where the Academy brazenly did precisely that.

The definition of a “qualified actuary” (for the Medicare Modernization Act) as being a member of the Academy has little to do with qualifications. I am a long-time Academy member yet would be profoundly unqualified to perform such work. (I am an FCAS.) Yet, consider one of my health actuarial brethren who may be an FSA and well qualified yet has chosen simply not to pay dues to the Academy. He is not wanting in qualifications or experience; this provision is little more than the Academy requiring Academy dues as a tax on working in this area.

Admittedly, my Academy membership would itself disqualify me from perform-



ing MMA services, as the Academy’s professional standards would prohibit me from providing services I do not have the expertise to provide. (As would those of the CAS.) But lack of Academy membership would in no way impair an otherwise-qualified individual.

While admittedly more verbose, requiring an MMA actuary to be “qualified to provide such services under the Actuarial Standards of Practice promulgated by the American Academy of Actuaries” would protect the public quite adequately

while still permitting individual actuaries the legitimate choice of whether to pay Academy dues.

HANK YOUNGERMAN
BURLINGTON, VT.

Ms. Kwiatkowski responds: My intent was not to dismiss trade associations that lobby to advance their own interests. Rather, it was to highlight the political environment in which the Academy operates, where millions of dollars (something the Academy doesn’t have) are spent every year on lobbying. Because the Academy has to rely only on its niche as a nonpartisan and objective resource, it’s impressive that we have been able to carve out a role for ourselves in the public policy arena.

In 2003, the Academy developed a letter to Congress asking that, under the Medicare prescription drug legislation, any activities that are actuarial in nature be undertaken by a qualified actuary who is a member of the Academy—an organization that establishes and maintains high standards of professionalism for its members.

As highlighted in the letter, with Academy membership comes the obligation to comply with high standards of qualification, conduct, and practice. Actuaries who are not members of the Academy, or one of the other U.S.-based actuarial organizations, are not subject to the professional standards and discipline process. Therefore, in a situation where a non-member actuary had issued a flawed actuarial opinion or certification, the Academy would not be available to help address the situation.

The Academy’s goal in submitting this letter was to help ensure that such certifications or attestations are signed only by appropriately qualified actuaries. Through Academy membership, actuaries are providing a high level of assurance of their qualifications and expertise for rendering an actuarial certification. An actuary credentialed by the Academy is required to have the appropriate education and experience to sign such an actuarial opinion.

By submitting the letter to Congress, the Academy was looking out for the interests of the actuarial profession as well as the public good, which is part of our mission as the public policy and professionalism organization for actuaries practicing in the United States.

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