

ASOP No. 28—June 2011

Appendix 2

Comments on the Exposure Draft and Responses

The exposure draft of this ASOP, *Statements of Actuarial Opinion Regarding Health Insurance Liabilities*, was issued in June 2010 with a comment deadline of October 30, 2010. Eleven comment letters were received, some of which were submitted on behalf of multiple commentators, such as by firms or committees. For purposes of this appendix, the term “commentator” may refer to more than one person associated with a particular comment letter. The ASOP No. 28 Task Force of the Health Committee of the Actuarial Standards Board carefully considered all comments received, and the Health Committee and ASB reviewed (and modified, where appropriate) the changes proposed by the Task Force.

Summarized below are the significant issues and questions contained in the comment letters and the responses.

The term “reviewers” in appendix 2 includes the Task Force, the Health Committee, and the ASB. Also, unless otherwise noted, the section numbers and titles used in appendix 2 refer to those in this final version.

GENERAL COMMENTS	
Comment	Two commentators pointed out that the 2010 update to the NAIC Health Annual Statement Instructions require the actuary to opine on assets that are actuarial items and that it would be appropriate to expand ASOP No. 28 to include both assets and liabilities and include a section that discusses considerations in the determination of whether an item is an “actuarial item”
Response	The reviewers agree that it is appropriate to include actuarial assets as well as liabilities within the scope of ASOP No. 28. Modifications have been made to the scope and definition sections to incorporate the assets which may be included in the statement of opinion, and also to include references to assets as well as liabilities throughout ASOP No. 28.
SECTION 1. PURPOSE, SCOPE, CROSS REFERENCES, AND EFFECTIVE DATE	
Section 1.2, Scope	
Comment	Two commentators requested clarification regarding the applicability of ASOP No. 28 to the actuarial memorandum prepared in support of an actuarial opinion.
Response	The reviewers have modified the language in section 1.2 to eliminate the reference to “and supporting memoranda.” The intent is for ASOP No. 28 to apply to the statement of actuarial opinion. Any actuarial memoranda prepared to document and support an opinion are subject to ASOP No. 41, <i>Actuarial Communications</i> , and any requirements that may be provided by a regulator, as described in section 3.13. The definition of an actuarial memorandum is provided in ASOP No. 28, and is referenced in sections 3.11 and 4.1.

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Comment	One commentator suggested inserting “or more” so the sentence would end “under one or more of the following circumstances.” The rationale for the recommendation was that currently the life Actuarial Opinion and Memorandum Regulation (AOMR) has specific instructions that some states apply to health companies that would have reported using the life and health blank in the past.
Response	The reviewers agreed that this clarification was helpful and incorporated the change.
Comment	Three commentators suggested that additional clarity around the scope of ASOP No. 28 and its intersection with ASOP No. 6, <i>Measuring Retiree Group Benefits Obligations</i> ; ASOP No. 22, <i>Statements of Opinion Based on Asset Adequacy Analysis by Actuaries for Life or Health Insurers</i> ; and ASOP No. 36, <i>Statements of Actuarial Opinion Regarding Property/Casualty Loss and Loss Adjustment Expense Reserves</i> would be helpful. One commentator suggested specific language. Another noted that there are life insurance companies that have a majority of their premium reserves characterized as accident and health and suggested that it be made clear that ASOP No. 28 applied to actuaries preparing opinions in such situations.
Response	<p>The reviewers have added language to clarify that ASOP No. 28 does not apply to actuaries preparing statements of actuarial opinion that are subject to ASOP No. 6, <i>Measuring Retiree Group Benefits Obligations</i> or ASOP No. 36, <i>Statements of Actuarial Opinion Regarding Property/Casualty Loss and Loss Adjustment Expense Reserve</i> and that the standard also does not apply to actuaries preparing statements of actuarial opinion for life insurance companies, subject to ASOP No. 22, <i>Statements of Opinion Based on Asset Adequacy Analysis for Life and Health Insurers</i>. The reviewers have also added language to note that ASOP No. 22 may also be applicable to actuaries preparing opinions in compliance with ASOP No. 28.</p> <p>The reviewers note that while the guidance contained in ASOP No. 28 may be helpful to an actuary preparing a statement for a life company with a majority of business being health insurance; the applicable standard of practice for these companies is ASOP No. 22.</p>
Comment	One commentator requested clarification regarding the applicability of ASOP No. 28 to work performed through a contractual arrangement with a principal or client for periodic reports presenting estimates of outstanding claim liabilities produced in conjunction with estimates of self financed premium equivalent-rates. The commentator expressed an opinion that ASOP No. 28 should not apply because the contracting party would not be “obligated” to report or disclose this information.
Response	The reviewers believe that the language in section 1.2 makes it clear that ASOP No. 28 applies to actuaries providing written statements of actuarial opinion relating to the obligations of health benefit plans provided by self-insured or government plan sponsors when that sponsor is contractually responsible to obtain the opinion or when the actuary represents the opinion as being in compliance with ASOP No. 28.

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Comment	One commentator commented that the scope seems to be very broad, and asked for clarification regarding the intent of the words “licensure” and “contractual obligations.”
Response	The reviewers note that the language is intended to be broad to encompass the variety of written opinions of health liabilities and assets that may be prepared. The reference to licensure requirements made within the transmittal letter of the exposure draft was intended to encompass circumstances such as those where actuaries working for Blue Cross Blue Shield Licensees must provide opinions to the Blue Cross and Blue Shield Association. The words contractual obligations are intended to encompass a variety of situations in which an actuary could be retained to provide a review of actuarial liabilities and then prepare and represent an opinion as being in compliance with ASOP No. 28. These might include, but are not limited to, reviews of self-funded employer obligations which an employer is contractually obligated to provide, or reviews in the context of a sale or merger of a company or segment of business or licensure agreements.
Section 1.4, Effective Date	
Comment	One commentator recommended that the effective date be no earlier than May 31, 2011 to assure that change did not occur in the middle of the process for 2010 annual statement opinions and memorandums.
Response	The reviewers understand this concern. The revised version of ASOP No. 28 is effective for all statements of actuarial opinion regarding health insurance liabilities and assets rendered on or after December 31, 2011. As such, the effective date will not conflict with an annual statement reporting cycle for most companies.
SECTION 2. DEFINITIONS	
Comment	Three commentators commented on the definition of insurer. Two were concerned that the definition included was too narrow, and would exclude organizations to which ASOP No. 28 is intended to apply and two noted that the definition was not used in the document.
Response	The reviewers have deleted the definition of “insurer” since the term is not used elsewhere in the standard.
Section 2.6, Health Insurance Liability	
Comment	One commentator suggested that the definition of health insurance liabilities in section 2.6 be expanded to specifically include the reserves reported on line 7 of page 3 of the health annual statement blank (reserves for amounts not yet due).
Response	The reviewers agreed that this clarification would be helpful and added reserves for amounts not yet due as another example to the definition in section 2.6.
Comment	One commentator noted that in the NAIC Health Annual Statement actuarial opinion instructions, the actuary is required to opine on certain items even if the amount recorded is zero. The commentator suggested this be addressed within the definition of a health insurance liability.
Response	The reviewers agree that it is appropriate to note that the amount of a liability may be zero and modified the definition accordingly.
Section 2.9, Qualified Actuary	
Comment	Two commentators recommended that the definition of “qualified actuary” in section 2.9 should also reference the American Academy of Actuaries <i>Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States</i> .
Response	The reviewers agreed and modified the definition accordingly.

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Section 2.11, Statement of Actuarial Opinion	
Comment	One commentator recommended that the definition of “statement of actuarial opinion” (now section 2.9) be checked for consistency with the definitions used in other ASOPs.
Response	The reviewers acknowledge that the definition of “statement of actuarial opinion” is not consistent in all ASOPs. The definition in the exposure draft is the definition used in the American Academy of Actuaries <i>Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States</i> . This definition has been retained in the revised version of ASOP No. 28; the intent of the ASB is that this definition will become the standard in all ASOPs over time.
Comment	One commentator felt that the definition of opinion was too vague and could extend to informal conversations.
Response	The reviewers believe that the definition, which refers to an opinion expressed in the course of performing actuarial services and intended by the actuary to be relied upon by the person or organization to whom it is addressed, describes a situation in which both scope of work is defined and reliance is intended and therefore indicate a degree of formality that would not extend to informal conversations. Further, as noted in the previous comment, the definition is consistent with that used in the <i>Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States</i> .
2.12, Valuation Date	
Comment	Four commentators requested clarity around the date definitions used in ASOP No. 28. Two commentators pointed out that it is possible for the date for which the opinion is provided and the cutoff date for amounts recorded to be different based on company specific definitions for the timing of claim payments; one recommended that the valuation date be defined as “the date as of which those liabilities addressed by the actuarial opinion is presented.” The third suggested that it would be preferable to use three date definitions: valuation, accounting, and review date; and that by doing so additional useful information would be provided, and also noted that the additional dates are referred to in section 3.5, Scope of Analysis. The fourth suggested that the actuary be encouraged to consider inclusion or non-inclusion of subsequent events happening after the valuation date.
Response	The reviewers have modified the definition of valuation date to clarify that it is the date for which the opinion is provided. The reviewers also note that sections 3.5(a), 3.5(b), and 4.1(f) provide additional clarification regarding dates.
SECTION 3. ANALYSIS OF ISSUES AND RECOMMENDED PRACTICES	
Section 3.1, Legal, Regulatory, and Contractual Requirements	
Comment	One commentator recommended that changing the wording of the last half of the first sentence here to be “specific requirements of law, of regulatory authorities, and of the principal to whom the opinion is expressed, as applicable” would increase clarity.
Response	The reviewers agree and made the suggested change.
Section 3.2, Purpose of the Statement of Actuarial Opinion	
Comment	One commentator commented on section 3.2 and raised concerns about it relative to the prescribed language requirements in the NAIC Health Statement Instructions.
Response	The reviewers note that this comment was combined with others which raised similar concerns about the prescribed language requirement in response to the exposure draft transmittal memorandum, question 4. A response to the concerns is provided in section 4.1 of appendix 2.

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Section 3.3, Liabilities Being Opined Upon	
Comment	One commentator suggested that if an asset adequacy opinion is required, that a table be included to describe the formula reserves, additional actuarial reserves and other amounts, and clarify that the amounts in the table are defined in the Health Annual Statement Instructions which are used instead of the amounts that correspond to the life and health statement blank.
Response	The reviewers note that additional clarification regarding this standard and its interaction with asset adequacy opinions have been addressed in the section 1.2. While a table such as the commentator described might be helpful and could be included in the actuarial memorandum documenting the opinion, the reviewers do not believe it should be required and therefore have not incorporated this recommendation in ASOP No. 28. If an asset adequacy opinion is required, the actuary should also follow the guidance of ASOP No. 22.
Comment	One commentator asked for clarification regarding the applicable accounting standard in the event that ASOP No. 28 is intended to apply to periodic reports of outstanding claim liabilities for self-financed health benefit arrangements.
Response	The reviewers believe it is the responsibility of the actuary preparing the statement of opinion to identify the applicable accounting standard. In a situation where more than one accounting standard could apply, the actuary should seek guidance from the principal for whom the opinion is being prepared.
Section 3.4, Stated Basis of Liability and Asset Presentation	
Comment	One commentator questioned whether the stated basis of liability presentation must be noted in the statement of actuarial opinion or whether it may be included in the supporting actuarial memorandum. The same commentator also noted that there are other disclosure requirements that do not fit within the prescribed wording requirements of the NAIC Health Annual Statement instructions.
Response	The reviewers believe that it is essential that the basis of accounting be included; guidance is provided in section 3.4. The reviewers note that section 4.1 has been modified to clarify that the disclosure requirements may be made within either the actuarial opinion or within the supporting actuarial memorandum.
Comment	One commentator wrote that it was unclear what was meant by “types” of loss adjustment expenses and why the definition would need to be repeated if they are defined by the basis of liability presentation.
Response	The reviewers added a definition in section 2.7 to clarify the expression “loss adjustment expenses.” The words “types of” in section 3.4(b) allow the specific loss adjustment expense categories to be described.
Section 3.5, Scope of the Analysis Underlying the Statement of Actuarial Opinion	
Comment	One commentator asked whether the identification of the scope of analysis upon which the opinion is based must always be included in the opinion itself, or whether it could be included in the actuarial memorandum.
Response	The reviewers believe this concern is addressed by the additional language in section 4.1 which indicates disclosures may be made in the actuarial memorandum if they are not made within the statement of actuarial opinion.

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Comment	One commentator wrote that section 3.5(a) which references the date of the data that underlies the analysis was unclear, and noted that multiple dates might be involved depending on the liabilities covered, source systems involved or other factors.
Response	The reviewers believe that section 3.5 is clear in its direction that the data underlying the opinion be described thoroughly and that the use of multiple dates would be acceptable as long as they are described.
Comment	One commentator noted that section 3.5(c) asks the actuary to state whether their opinion applies in aggregate or to each item individually, observed that past language has been in the aggregate only, and suggested that this change be highlighted.
Response	The reviewers acknowledge that in the past, ASOP No. 28 has required the opinion to apply to the reserve amounts in aggregate. However, since the revised version of ASOP No. 28 applies to future statements of opinion, and because it is clear that the opinion should specify whether the opinion is in aggregate or to each item individually, the reviewers do not feel that a comment highlighting the change is needed within the revised ASOP No. 28.
Section 3.7, Liability and Asset Evaluation	
Comment	One commentator wrote that section 3.7 and its reference to the review of work completed by personnel within the actuary's control should not be needed as this relationship and review would not constitute "reliance" on the work of another. The commentator noted that if this is considered reliance, then it is contradictory with the requirements of section 4.2(e) which require the actuary to only examine the underlying data versus the actuary's work.
Response	The reviewers believe that section 3.7 provides clear guidance regarding the review of work of personnel under the actuary's control, and also provides guidance in section 3.7.2 regarding appropriate review when reliance is placed on another actuary's work. Section 4.2(b) addresses the disclosure that is required when reliance is placed on another actuary's work.
Comment	Two commentators wrote regarding opinions in which the actuary opined that liabilities made good and sufficient provision. One commentator suggested the language "when the actuary is required to opine" be changed to "if the actuary opines" as the standard should apply to what the actuary does, rather than what the actuary is required to do. The second commentator suggested adding a comment to clarify that there may be situations in which a provision for adverse deviation is appropriate and necessary, even though the actuary is not opining that the amounts make good and sufficient provision for all liabilities.
Response	The reviewers felt that the word "when" appropriately describes the action taken by the actuary, and retained the exposure draft language. The reviewers felt the suggestion to add a comment to clarify that there may be situations in which a provision for adverse deviation is necessary even when the opinion does not state the amounts make good and sufficient provision was helpful and incorporated the change in section 3.7.
Section 3.7.1, Evaluation Based on Actuary's Estimate of Unpaid Claim or Other Liabilities	
Comment	One commentator suggest that it would be preferable to modify section 3.7.1 to describe both what is required to evaluate the reasonableness of reserves as well as the determination of good and sufficient (currently described in section 3.7).
Response	The reviewers felt that the language in sections 3.7 and 3.7.1 provides appropriate guidance and made no changes.

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Section 3.7.2, Evaluation Based on the Actuary’s Use of Another’s Estimates or Opinions	
Comment	One commentator suggested that the language in ASOP No. 22, section 4.4, be used in ASOP No. 28, section 3.7 or section 3.7.2. This would add the sentence “The actuary should then form an overall opinion without claiming reliance on the opinions of other actuaries” to one of these sections. The reviewer also noted that making this change would be consistent with section 3.12.
Response	The reviewers have modified the language of section 3.7.2 to clarify that the opining actuary is forming an overall opinion of the amounts. The reviewers also believe that section 3.7.2 provides appropriate guidance for the opinion actuary to consider in determining whether to use another’s supporting analyses or opinions when forming an overall opinion.
Comment	One commentator expressed concern that the statement “where material differences exist, the issues underlying the differences should be understood by the actuary,” and felt the paragraph could be interpreted to mean that the opining actuary can accept the opinion of another actuary with which he disagrees so long as differences are understood. The commentator does not believe that an opining actuary should provide an unqualified opinion for a number with which the actuary disagrees.
Response	The reviewers agree and have added the following sentence to section 3.7.2: “If such understanding does not result in resolution of the differences, then the actuary should take this into consideration when forming an overall opinion.”
Section 3.8 , Prior Opinion	
Comment	One commentator felt section 3.8 was not clear with respect to which actuary (prior or current) is being referred to with respect to the phrase “actuary’s liability estimate.” Further, the commentator suggested that guidance be provided on what the opining actuary should do in the event the changes resulted in a material effect on the estimate.
Response	The reviewers have clarified the language regarding the reference to the current and prior actuary, and provided guidance to the actuary in the event that the difference is material.
Section 3.9, Adverse Deviation	
Comment	One commentator wrote regarding references to adverse deviation and observed that in the usual course of business there routinely are uncertainties that could cause material adverse deviation with the possible exception of a situation in which a large number of months of claims development is available. The commentator suggested that ASOP No. 28 be modified to make it clear that significant probabilities for adverse deviation are the norm and not the exception.
Response	The reviewers have updated the language in section 3.9 to address the concern and the need to consider the probability of material difference in the future paid amounts relative to the estimates. The reviewers also note that adverse deviation is identified as an item for disclosure in section 4.3(f).
Comment	One commentator suggested that the following sentence be added at the end of section 3.9, “The actuary should consider the rule of thumb, ‘the greater the uncertainty, the greater the margin.’”
Response	In response to this comment, the reviewers added a sentence at the end of section 3.9 commenting on the establishment of a provision for adverse deviation.

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Section 3.11, Statements of Actuarial Opinion	
Comment	One commentator noted that section 3.11(b) defines an adverse opinion to include situations where the reserve was not “good and sufficient” as well as situations where the liabilities fell outside of a reasonable range, if that is the basis for evaluation. The commentator then stated a concern that it is counter-intuitive to group three conclusions (“not good and sufficient,” “deficient,” and “excessive”) that are quite different under the same type of opinion.
Response	The reviewers believe that it is appropriate to include as adverse any opinion where the actuary believes the booked amount falls outside the reasonable range of estimate.
Comment	One commentator asked whether the word “sufficient” in section 3.11(d) was correct and suggested that the word should be “insufficient.”
Response	The reviewers believe the language is appropriate as it refers to the dependency of the actuary on sufficient data, etc.
SECTION 4. COMMUNICATIONS AND DISCLOSURES	
Section 4.1, Actuarial Communication	
Comment	Three commentators suggested that, in light of the prescribed language provided by the NAIC for opinions prepared in accordance with the NAIC Health Annual Statement instructions, that it would be desirable if the standard allowed for the disclosures included in sections 4.1 and 4.2 to be included in an actuarial memorandum rather than within the actuarial opinion.
Response	The reviewers agree that it would be undesirable to have a standard which effectively required all opinions prepared following the NAIC Health Annual Statement instructions to require disclosure of additional language. The reviewers have addressed this concern by making it clear in section 4.1 that in a situation where the prescribed language is appropriate for the circumstances, yet does not encompass every disclosure identified in ASOP No. 28, the actuary may meet the requirements of ASOP No. 28 by following prescribed language for actuarial opinions prepared for NAIC Health Annual Statement and then including additional detailed disclosures within the required actuarial memorandum.
Comment	One commentator suggested adding the phrase “statement of actuarial opinion based upon an asset adequacy analysis” before the word “or” in section 4.1(a). The commentator felt that this wording would emphasize that some opinions are not based upon an asset adequacy analysis.
Response	The reviewers believe the words “or alternative words” would allow the opining actuary to refer to a statement of actuarial opinion based upon an asset adequacy analysis if those words were more appropriate for the opinion being rendered and did not modify the language of section 4.1(a).
Comment	One commentator expressed concern that the language in section 4.1(h) of the exposure draft was overly broad and required excessive amounts of disclosure.
Response	The language of concern in section 4.1(h) has been eliminated. Section 4.3(f) of the revised standard provides guidance on disclosures of risks of material adverse deviation.
Comment	One commentator asked whether section 4.1(h) of the exposure draft regarding material adverse deviation is intended to be addressed in the opinion or in the supporting actuarial memorandum.
Response	The reviewers note that the language in section 4.1(h) of the exposure draft has been eliminated.

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Comment	One commentator suggested that section 4.1(h) of the exposure draft is in conflict with section 3.7.
Response	The reviewers note that the language in section 4.1(h) of the exposure draft has been eliminated.
Section 4.3, Additional Disclosures	
Comment	One commentator noted that the exposure draft sections 4.2(b) and (c) refer to deficient or unreasonable opinions and redundant or excessive amounts of reserves, using similar language as ASOP No. 36. The commentator felt additional clarity was needed and questioned whether these disclosures apply to an adverse opinion when deficient, and what type of opinion would be involved if the amounts were redundant.
Response	The reviewers note that the sections 4.2(b) and (c) of the exposure draft are now sections 4.3 (b) and (c) of the revised standard. Section 3.11 addresses the types of opinions; they are intended to specify additional disclosure necessary if an actuary reaches one of these conclusions.
Comment	One commentator asked why the second paragraph of section 4.2(f) in the exposure draft was necessary.
Response	The reviewers note that section 4.2(f) of the exposure draft is now section 4.3(f) in the revised standard. The second paragraph is intended to clarify that the actuary is not expected to list every possible risk and uncertainty; but should identify those that are significant and could result in material adverse deviation. The actuary could also include a statement that indicates that the nature of the business is inherently risky.