

February 28, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Michael F. Consedine
Chief Executive Officer
National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, DC 20001

Dear Administrator Brooks-LaSure and Mr. Consedine:

I am writing to provide you with a report I am releasing today that identifies extensive awards of lavish vacations and other incentives from Medicare Supplement Insurance (Medigap) providers to health insurance agents and brokers.¹ I ask that you act quickly to end these secretive perks, which create inherent conflicts of interest that could cause insurance agents to provide seniors with poor advice about which Medigap product is best for them.

Our investigation uncovered the pervasive use of agent and broker incentives in the Medigap market. My staff identified 32 Medigap companies that offer agents rewards for selling their products to seniors.² These companies, which together to provide coverage to over six million seniors, dangle incentive trips such as a “Sunny San Diego trip,” “the sales reward trip of a lifetime” to “Ticket to St. Thomas, and “Paths to Maui” in front of agents and brokers – all for touting their products ahead of others that might be cheaper or more suitable for the customer.³

The problem with these backdoor payments is obvious. Medigap plans are standardized, but insurers have tremendous latitude in deciding which plans to offer and how to set premiums.⁴ An

¹ Office of Senator Elizabeth Warren, “Sales Before Seniors: How Medigap Insurers’ Sales Rewards Hurt Seniors on Medicare,” February 2023, https://www.warren.senate.gov/imo/media/doc/FINAL_Medigap_Sales_Report.pdf.

² Id.

³ New Horizons Insurance Marketing, “Mutual of Omaha Sunny San Diego Incentive Trip,” viewed October 2022, <https://www.newhorizonsmktg.com/incentives/mutual-of-omaha-sunny-san-diego-incentive-trip>; Cigna, “Ticket to St. Thomas,” October 2022, https://cignaforbrokers.com/gasbagent/cache/salespromotions/966660-csb-10-0068-b-sthomas_flyer_v4-web.pdf; Mutual of Omaha, “Paths to Maui,” viewed December 2022, https://www.mutualofomaha.com/esp/e4077/2022/docs/604656-SH_2023MSLMauiQualificationSPA.pdf.

⁴ Kaiser Family Foundation, “MEDIGAP: Spotlight on Enrollment, Premiums and Recent Trends,” Jennifer T. Huang, Gretchen A. Johnson, Tricia Neuman, Katherine A. Desmond, and Thomas Rice, April 2013, p. 18, <https://www.kff.org/wp-content/uploads/2013/04/8412-2.pdf>.

insurance agent who focuses on selling enough of one company's Medigap products to earn their next lavish vacation is an agent who is not focused entirely on finding the best plan for an individual senior. These agents are being incentivized to sell more expensive products or more products from a single company when other products or other companies' offerings may be best for their clients.

The Centers for Medicare and Medicaid Services (CMS) has taken important steps to regulate insurance agent and broker compensation and protect consumers, but there are still gaps that leave beneficiaries unprotected. In 2014, CMS finalized rules to address compensation for agents and brokers that sell Medicare Part C and Medicare Part D plans, noting the "significant role" that agents and brokers play in "providing guidance and advice to beneficiaries," and their "unique position to influence beneficiary choice."⁵ The agency further strengthened beneficiary protections in Medicare Part C and Part D in its Contract Year 2023 Medicare Advantage and Part D Policy and Technical Changes final rule, which outlined steps to hold plans accountable for detecting and preventing the use of confusing or potentially misleading marketing tactics by third-party organizations.⁶ But when it comes to Medigap, seniors remain vulnerable to agents who may care more about earning points for their next vacation than about helping a senior find the best policy.

This practice represents an abuse of the trust that seniors place in Medicare. Medigap insurance is not federally subsidized, but the terms and conditions under which Medigap plans are offered are regulated by CMS and state insurance regulators. CMS offers seniors extensive information on the Medicare.gov website, provides a Medicare.gov resource to help seniors "find a Medigap policy that works for you,"⁷ and provides direct links to company websites where seniors can purchase Medigap plans. Nowhere does CMS indicate that agents who sell these products may receive lavish vacations and other valuable perks in exchange for these sales.

Regulators must act to close these loopholes. Federal law requires that a state, at a minimum, "meets or exceed[s]" model regulations drafted by the National Association of Insurance Commissioners (NAIC) in regulating Medigap plans.⁸ However, NAIC's model regulations explicitly allow "bonuses, gifts, prizes, awards and finders' fees" like those identified in my report.⁹ While the model regulations do require agents to "make reasonable efforts to determine the appropriateness of a recommended purchase or replacement [policy]"¹⁰ and place some limits on

⁵ Department of Health and Human Services, Centers for Medicare & Medicaid Services, Federal Register Final rule, "Medicare Program; Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs," May 23, 2014, <https://www.gpo.gov/fdsys/pkg/FR-2014-05-23/pdf/2014-11734.pdf>.

⁶ Department of Health and Human Services, Centers for Medicare & Medicaid Services, Federal Register Final rule, "Medicare Program: Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency," May 9, 2022, <https://www.gpo.gov/fdsys/pkg/FR-2014-05-23/pdf/2014-11734.pdf>.

⁷ Medicare.gov, "Find a Medigap policy that works for you," <https://www.medicare.gov/find-a-plan/questions/medigap-home.aspx>.

⁸ National Association of Insurance Commissioners, "Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act," Fall 2021, <https://content.naic.org/sites/default/files/model-law-651.pdf>.

⁹ National Association of Insurance Commissioners, "Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act," Fall 2022, <http://www.naic.org/store/free/MDL-651.pdf>.

¹⁰ *Id.*

commissioners to “discourage ‘churning’ of policies,”¹¹ they do not explicitly prohibit compensation schemes that could lead to the sale of inappropriate Medigap plans.

Both CMS and NAIC have ample authority to protect consumers by establishing rules under which insurers that pay incentives to agents cannot be listed on the Medicare.gov website, or in the case of NAIC, by rewriting its model regulations to remove these secretive incentives. At a minimum, the Medicare.gov website should disclose the use of such sales incentives to beneficiaries.

I am therefore writing to ask that CMS and NAIC act as quickly as possible to end health insurers’ promises of lavish vacations and other incentives to insurance agents and brokers in exchange for selling Medigap plans to seniors. Specifically, I ask that:

1. NAIC update its model Medigap regulations to ban the use of incentives and giveaways that provide perverse incentives for agents to sell the most expensive Medigap policies to seniors regardless of whether they meet seniors’ needs.
2. CMS begin enforcing these standards as a condition of certification for Medigap policies under Section 1882 of the Social Security Act.¹²
3. CMS establish procedures to inform seniors via Medicare.gov of the use of these incentives by Medigap insurers, and establish procedures to ban the use of incentives by Medigap insurers that participate on the “Find a Medigap Plan” finder on Medicare.gov.
4. CMS use its existing authority to take any additional actions necessary to end the use of these incentives.
5. CMS and NAIC provide my office with a briefing, not later than March 31, 2023, on the implementation of these changes, and on any additional statutory changes that may be necessary to end the use of these lavish vacations and other incentives to entice agents and brokers to sell certain Medigap products to seniors.

Sincerely,



Elizabeth Warren
United States Senator

¹¹ Kaiser Family Foundation, “Medigap Enrollment and Consumer Protections Vary Across States,” Cristina Boccuti, Gretchen Jacobson, Kendal Orgera, and Tricia Neuman, July 11, 2018, <https://www.kff.org/medicare/issue-brief/medigap-enrollment-and-consumer-protections-vary-across-states/>.

¹² 42 U.S.C. 1395s.