

March 31, 2023

The Honorable Elizabeth Warren
United States Senator
309 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren:

Thank you for reaching out to the National Association of Insurance Commissioners (NAIC) and for forwarding a copy of your report outlining your concerns about the marketing of Medicare Supplement (Medigap) plans. As state insurance regulators, we share your desire to ensure that all consumers, and particularly the most vulnerable consumers, are protected from deceptive marketing practices.

In response to your letter and report, we surveyed the states to determine if there have been consumer complaints filed with state departments of insurance about the marketing and sale of Medigap plans. A significant majority of responding states reported no such complaints. A few states had received one or two complaints unrelated to sales incentives and those were resolved. One or two states have seen violations of state incentives rules and have taken appropriate action. While your report raises concerns about the potential impact sales incentives could have on consumers purchasing the right plan for them, the states have not seen evidence that such incentives have led to consumer harm, but we will remain vigilant. Sales incentives and commission structures do not relieve agents and brokers of their legal obligations to recommend suitable products to consumers.

As you note in your report, Medigap plans are standardized and are designed to be suitable supplemental coverage for seniors who choose traditional Medicare coverage. They do not have networks or other limitations that could make a plan more or less suitable for enrollees depending on their unique needs and circumstances. While your report raises important questions about the potential for situations where incentives could influence how producers present Medigap plans to seniors, state regulators have no indication that these incentives have led to harm to consumers. When complaints are made, state regulators have the tools, and use them, to investigate and resolve issues.

The [recent report from the Senate Finance Committee](#) points to a more pressing threat to seniors - the improper marketing of Medicare Advantage (MA) plans. As the

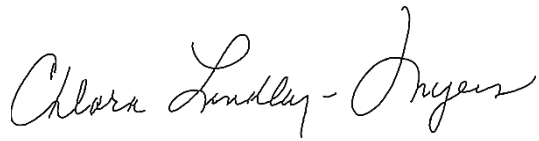
NAIC said in its May 5, 2022, letter to the Congress, since the adoption of the Medicare Modernization Act, which preempted state authority to oversee the marketing of MA plans, "State Departments of Insurance, as well as State Health Insurance Programs (SHIPs), consumer advocacy organizations, and the media, have reported patterns of overly aggressive, deceptive, and abusive marketing and sales practices in the MA plan marketplace." State and Federal regulators have documented tens of thousands of complaints from consumers who have been placed into an MA plan that is unsuitable for them, and sometimes without their knowledge or understanding. The Senate Finance Committee report highlights just some of the complaints states have received and some of the questionable practices used to sell these products. The NAIC continues to urge Congress to return MA marketing oversight authority to the states.

As for the NAIC Medigap Model (#651), we would like to note that all NAIC models are developed using an open process where all participants can raise issues and offer amendments. The Medigap Model was most recently amended in 2016 after passage of MACRA and during those lengthy discussions there were no objections raised to the current marketing language. Marketing was specifically discussed since consumers would need to be clearly and accurately informed of their new choices, but no state regulators or consumer advocates suggested the need to amend the marketing language.

For many seniors, Medigap, with traditional Medicare, can be a superior choice to MA due to the networks and other limitations associated with MA plans. However, the commissions for Medigap plans are relatively low compared to those for MA plans. Medigap issuers use bonuses and incentives to encourage agents and brokers to inform seniors of their products and the advantages of traditional Medicare. State regulators believe it is important for consumers to know all their options and that unnecessary limitations on incentives could be detrimental to a balanced marketplace for Medicare options and lead to a health insurance coverage gap for seniors.

Thank you again for your letter and your report. State regulators take seriously their responsibility to monitor the marketing practices of all insurers and producers within their jurisdiction to ensure consumers are protected. We look forward to continuing to work with you to keep insurance markets fair and accessible to consumers.

Sincerely,



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NAIC President
Director
Missouri Department of Commerce
and Insurance



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