Sales Before Seniors:

How Medigap Insurers' Sales Rewards Hurt Seniors on Medicare

Prepared by Senator Elizabeth Warren

February 2023

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I. Executive Summary

Millions of seniors are forced to rely on private Medicare Supplement Insurance, or "Medigap," to fill coverage and cost gaps in their Medicare coverage. To obtain information about the products available to them in this complicated marketplace, seniors often rely on advice from agents and brokers, who play a notable role in influencing consumers' buying decisions. This investigation by the Office of Senator Elizabeth Warren reveals that many of the private Medicare Supplement health insurance companies offer luxurious vacations and cash bonuses to agents and brokers, creating incentives for them to steer seniors to Medigap products that may not be the best fit for their financial and health care needs. Despite the risks they pose to seniors, these incentives for agents and brokers—that are not disclosed to seniors—are legal, pervasive, and minimally regulated.

The investigation reveals that in 2021, over six million seniors purchased their Medigap plans from companies that offer agents special, secretive rewards for steering customers to targeted plans. Seniors can pay a high price for these agent bonuses: signing up for the wrong plan could cost hundreds or thousands of dollars more each year, either in higher premiums, higher out-of-pocket medical costs, or both.

Specifically, the investigation finds that:

1. **Offers of luxury vacations and other perks to agents are pervasive in the Medigap market.** In exchange for selling seniors specific Medigap policies, health insurers routinely hand out points toward expensive "incentive trips" and other perks for agents. As of the 2022 Medicare open enrollment period, there are at least 32 companies providing, directly or through third-parties, vacations and cash bonuses as incentives for selling certain Medigap products (**Table 1**). These companies collectively signed over six million seniors up for Medigap insurance and collected more than $16 billion in premiums from beneficiaries in 2021.
2. **Bonuses and perks can create incentives for agents and brokers to steer seniors to the wrong products.** The choice of one insurer over another can have significant financial implications for seniors. In one 2019 study, economists found that even though Medigap plans are standardized, offering the same benefits and coverage, the prices widely vary across insurers. Medigap perks raise significant questions about whether agents and brokers are recommending certain Medigap policies because they are the right fit for seniors, or because they yield credit toward the fanciest vacations or most generous bonuses.
3. **Bonus perks for agents and brokers are legal and minimally regulated.** Federal and state regulation of Medigap sales has significant gaps, making it legal for health insurers to hand out perks to agents and brokers who sell seniors favored Medigap products—even if those insurance products do not meet the enrollees' needs. The Centers for Medicare and Medicaid Services (CMS) has acknowledged the significant role that agents and brokers play in influencing beneficiary choice. CMS has adopted regulations governing compensation for selling Medicare Part C and D Plans that require insurers to provide their compensation structures to CMS when requested; that prohibit referral fees that could potentially provide financial incentives for agents or brokers to enroll beneficiaries in inappropriate plans; and that place limits on compensation levels. Federal regulation of Medigap plans does not include these same protections, and few states have adequate consumer protections in place.

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We're going all-in with our rewards program.
This year, you're set up to win with exciting sales opportunities. WINCENTIVES 2022 gives you more ways to earn extra money – each and every month – with no limits.
1,000 targeted leads with a direct mail campaign for every fourth application you write for Medicare Supplement Plans F, G or N.*
$100 for every application you write for Medicare Supplement Plans F, G or N.**
$25 for every application you write for qualifying Supplemental Health products.***
$25 NEW for every Flexible Choice Dental, Vision & Hearing application.
Start earning your WINCENTIVES with Cigna Supplemental Benefits. Visit AgentView for tools and support.
Together, all the way.
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NORWEGIAN CRUISE 2023
2023 AGENT INCENTIVE T
LIBERTY BANKERS INSURAN
MEDICARE SUPPLEMENT
MEDICARE SUPPLEMENT QUALIFICAT
Must meet the definition of Qualified Agent.
QUALIFICATION TERMS
All Home Office decisions are final.
Qualification P
PEKIN
2022 GATEWAY SALES CONTEST
The Don CeSar, St. Pete Beach, Florida • Maynard Lake Lodge and Outpost, Ontario
CONTEST PERIOD
January 1 - May 31, 2022
HOW DO I EARN A TRIP?
One Scenic Trip is earned for every 100 contest points.
One Fishing Trip is earned for every 125 contest points.
One point will be awarded for every:*
$2,300 of all Property/Casualty Premium
$700 of annualized Individual Life, Voluntary Life, or Medicare Supplement Premium
$700 of Group Life monthly Premium**
$5,000 of collected Annuity Premium, including Single Premium
*All P&C applications must have an effective date between January 1, 2022, and May 31, 2022. All Life Company applications must be received in the Home Office between January 1, 2022, and May 31, 2022, and must be PAID for by July 31, 2022.
** Group Life policy effective date must be during the contest period.
LIFE eAPP BONUS
Five (5) bonus points will be awarded for every individual Life eApp submitted and paid for. Maximum of 100 bonus points awarded.
COMMERCIAL LINES NEW BUSINESS PROMOTION
The agency in each sales territory producing the most new Commercial Business during the contest period will be awarded one (1) Scenic or Fishing trip or a $2,000 cash award. A minimum of $100,000 of new premium ($50,000 in Ohio) is required to qualify.
DOUBLE MY POINTS BONUS
LEARN MORE ABOUT OUR TRIP L
www.doncesar.com
https://maynardlake.com
PATHS TO MAUI
Mutual Sales Leaders – Senior Health | March 12-17, 2023
No matter what path you take, the destination is still the same. It feels like success. And it looks like Maui. Here's how to qualify:
Medicare Supplement | Dental/Vision Products
Eligibility
You are eligible to earn the Mutual Sales Leaders trip to Maui, Hawaii, based on the business you place with Mutual of Omaha as a Brokerage Producer (personal production only; individuals or agencies do not qualify based on business placed by down-line producers).
TICKET TO St.THOMAS
Earn the sales reward trip of a lifetime.
Sell Cigna Supplemental Benefits to earn a five-day, four-night
It's all happening June 8-12, 2023, at The Westin Beach Resort
When is the qualification period?
September 1, 2022, to February 28, 2023
What products qualify?
Earn 100% issued annualized premium (IAP) for production credit by selling:
Cigna Medicare Supplement products
Cigna Supplemental Health products
Flexible Choice Cancer
Flexible Choice Heart Attack & Stroke
Flexible Choice Dental, Vision & Hearing
Flexible Choice Hospital Indemnity
Accident Treatment
Cancer Treatment
Individual Whole Life
Earn your ticket to St. Thomas. We'll see you
Visit AgentViewCigna.com.
Together, all the way.
SEPT. 27 TO 30 2022
SUNNY San Diego A BIT OF BLISS
Medicare Supplement and Dental/Vision Products
San Diego, CA September 27-30, 2022
Eligibility
You are eligible to earn the Sunny San Diego trip to San Diego, CA based on the business you place with Mutual of Omaha as a Brokerage Producer (personal production only; individuals or agencies may not qualify based on business placed by down-line producers)
Qualification Period
Net issued business between May 1, 2022, and July 31, 2022
All issued policies must be placed and premium collected
Production Requirement
Minimum of 65 Qualifying Production Credits
Minimum of 40 Medicare Supplement* issued applications are required to qualify for the trip. Each application worth 1 credit. Any application that is split between two producers, will receive .5 credit per application
2 credits for each Dental issued application
0.5 credits for Medicare Supplement Internal or Affiliate Conversions/Replacements**
Your Reward
Miscellaneous

II. Introduction

Medicare provides health insurance to seniors who are 65 and older and certain disabled individuals.[1] Medicare has four parts – A, B, C, and D. Parts A and B, the "original" Medicare programs, are administered directly by the federal government, and Parts C (also known as Medicare Advantage) and D (Medicare's prescription drug benefit) are administered by private insurance companies.[2]

Some services are not covered by traditional Medicare, and Medicare does not cap out-of-pocket spending.[3] In the absence of congressional action to expand and strengthen traditional Medicare, many beneficiaries enroll in Medicare Supplement Insurance, or "Medigap" plans, to help fill these gaps.[4] Medigap plans help individuals pay for deductibles and co-payments that Medicare does not cover, and, depending on the plan, can also defray additional health care costs, such as extra days in the hospital or emergency care in foreign countries. Medigap plans are "the primary source of supplemental coverage for beneficiaries in traditional Medicare who do not have employer-sponsored coverage or retiree health benefits, do not meet the eligibility requirements for Medicaid, and want an alternative to enrolling in a Medicare Advantage plan."[5] In 2021, over 14 million Americans were enrolled in Medigap plans, paying approximately $34 billion in premiums.[6]

While Medigap plans are not subsidized by the federal government, they are regulated by the Centers for Medicare and Medicaid Services (CMS).[7] Seniors can find information about Medigap policies offered by private insurers and links to buy them through the Medicare.gov website.[8] Medigap plans are also regulated by the insurance regulators in each state where the insurers offer coverage.[9]

There are ten different CMS-defined categories of Medigap plans available for enrollees, each of which must meet certain minimum standards in benefits and cost sharing.[10] These standardized plans are identified by the letters A, B, C, D, F, G, K, L, M and N.[11] However, since 2020, Plan C and Plan F are no longer available for newly eligible beneficiaries as a result of the *Medicare Access and CHIP Reauthorization Act of 2015* (MACRA).[12] If enrollees already have Plan F or C, they generally can keep their coverage with few exceptions. Regardless, there is still a range in coverage options, from the most basic Plan A that covers Medicare copayments, but not deductibles or other services, to the most comprehensive Plan G that covers the entire cost of Medicare copayments and deductibles, as well as skilled nursing facility care coinsurance and certain other benefits.[13]

Some Medigap plans that do not cover all of the costs of Medicare services may still include other important features for certain beneficiaries. Plans K and L, for instance, are less generous in their coverage of Medicare copayments and deductibles than other comprehensive plans, but both plans guarantee that if a beneficiary reaches an annual out-of-pocket spending limit, the plan will pay 100 percent of the covered costs for the rest of the insurance year.[14] With the approval of state insurance regulators, Medigap insurers are able to offer plans with additional benefits, such as eyeglasses and fitness programs, as long as they meet the federal floor of benefits required in each standardized plan.[15]

Although the benefits included in Medigap plans are standardized, insurance companies differ in which of the standardized plans they offer, the optional additional benefits they offer, and the way they set insurance premiums. And depending on the way that insurance companies use a customer's age to set premiums,[16] a senior's decision to purchase Medigap from one insurance company over another may mean much higher premium payments. One analysis conducted in 2013 found that numerous studies have found that very few beneficiaries of Medigap choose the lowest-cost plans.[17]

Medigap plans have become increasingly popular, especially as the number of seniors with supplemental health insurance coverage from their employers has declined.[18] However, Medigap plans are an expensive additional cost.

> Approximately 40 percent of Medigap enrollees had annual incomes below $40,000 in 2018

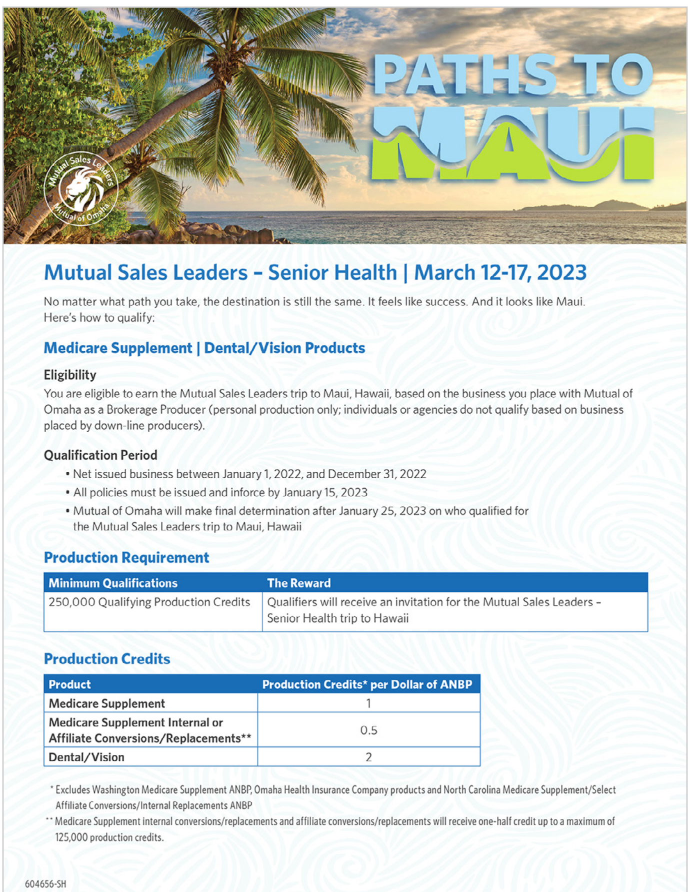
Approximately 40 percent of Medigap enrollees had annual incomes below $40,000 in 2018,[19] and seniors with Medigap plans can expect to pay an average annual premium ranging from $98.75 to $248.67.[20] Average premiums for Medigap plans can also vary tremendously depending on the age of the beneficiary and where the beneficiary lives.[21] To choose a plan, seniors often rely on agents and brokers for advice: "much of the information available to beneficiaries shopping for … Medicare Supplement (Medigap)… comes from agents (brokers) or health insurers,"[22] and, "agents clearly influence consumers' buying decisions."[23]

Reforms to traditional Medicare that would expand coverage and lower out-of-pocket costs are badly needed, and Congress should act to strengthen the program. Seniors who purchase Medigap policies should also know they are receiving policies based on their insurance needs, not to line the pockets of insurance agents.

III. Background and Methodology

Senator Warren has a record of identifying and revealing the pervasive use of travel, gifts, and rewards by insurance companies to encourage insurance agents to sell their products.[24] Senator Warren became aware of and concerned about the use of similar reward schemes used in the Medicare marketplace and asked her staff to investigate this issue. The use of these undisclosed incentives to sell Medigap plans was a particular concern because CMS regulates sales incentives for Medigap plans less strictly than sales incentives for Medicare Part C and Part D markets.

Using data released by the National Association of Insurance Commissioners (NAIC) in 2022,[25] Senator Warren's staff identified health insurance companies that sold Medigap insurance plans and used publicly available information to identify which of these insurance companies offered perks and other incentives to insurance agents as rewards for selling certain Medigap plans. Notably, information about some of these companies is accessible only via "Members-only" portals and websites for current insurance agents—meaning that the results of this investigation may underestimate the prevalence of incentives and rewards in the Medigap insurance industry.[26]



Mutual Sales Leaders – Senior Health | March 12-17, 2023

No matter what path you take, the destination is still the same. It feels like success. And it looks like Maui. Here's how to qualify:

Medicare Supplement | Dental/Vision Products

Eligibility

You are eligible to earn the Mutual Sales Leaders trip to Maui, Hawaii, based on the business you place with Mutual of Omaha as a Brokerage Producer (personal production only; individuals or agencies do not qualify based on business placed by down-line producers).

Qualification Period

- Net issued business between January 1, 2022, and December 31, 2022
- All policies must be issued and inforce by January 15, 2023
- Mutual of Omaha will make final determination after January 25, 2023 on who qualified for the Mutual Sales Leaders trip to Maui, Hawaii

Production Requirement

Minimum Qualifications	The Reward
250,000 Qualifying Production Credits	Qualifiers will receive an invitation for the Mutual Sales Leaders – Senior Health trip to Hawaii

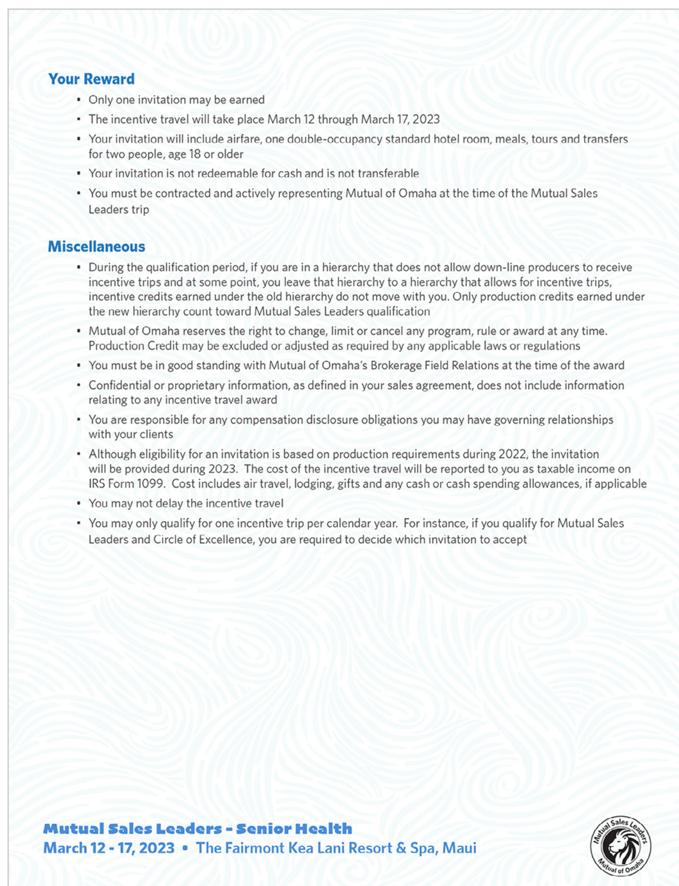
Production Credits

Product	Production Credits* per Dollar of ANBP
Medicare Supplement	1
Medicare Supplement Internal or Affiliate Conversions/Replacements**	0.5
Dental/Vision	2

* Excludes Washington Medicare Supplement ANBP, Omaha Health Insurance Company products and North Carolina Medicare Supplement/Select Affiliate Conversions/Internal Replacements ANBP

** Medicare Supplement internal conversions/replacements and affiliate conversions/replacements will receive one-half credit up to a maximum of 125,000 production credits.

604656-SH



Your Reward

- Only one invitation may be earned
- The incentive travel will take place March 12 through March 17, 2023
- Your invitation will include airfare, one double-occupancy standard hotel room, meals, tours and transfers for two people, age 18 or older
- Your invitation is not redeemable for cash and is not transferable
- You must be contracted and actively representing Mutual of Omaha at the time of the Mutual Sales Leaders trip

Miscellaneous

- During the qualification period, if you are in a hierarchy that does not allow down-line producers to receive incentive trips and at some point, you leave that hierarchy to a hierarchy that allows for incentive trips, incentive credits earned under the old hierarchy do not move with you. Only production credits earned under the new hierarchy count toward Mutual Sales Leaders qualification
- Mutual of Omaha reserves the right to change, limit or cancel any program, rule or award at any time. Production Credit may be excluded or adjusted as required by any applicable laws or regulations
- You must be in good standing with Mutual of Omaha's Brokerage Field Relations at the time of the award
- Confidential or proprietary information, as defined in your sales agreement, does not include information relating to any incentive travel award
- You are responsible for any compensation disclosure obligations you may have governing relationships with your clients
- Although eligibility for an invitation is based on production requirements during 2022, the invitation will be provided during 2023. The cost of the incentive travel will be reported to you as taxable income on IRS Form 1099. Cost includes air travel, lodging, gifts and any cash or cash spending allowances, if applicable
- You may not delay the incentive travel
- You may only qualify for one incentive trip per calendar year. For instance, if you qualify for Mutual Sales Leaders and Circle of Excellence, you are required to decide which invitation to accept

Mutual Sales Leaders - Senior Health
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IV. Findings

A review of publicly available information reveals that incentive trips and other perks for brokers and agents are pervasive in the Medigap marketplace. Agents and brokers generally qualify for these incentive trips after they have met dollar sales thresholds—potentially creating an incentive to push seniors into the most expensive Medigap plans, regardless of whether those plans meet their needs.

The 32 companies that offered vacations or other rewards for Medigap sales collectively provided Medigap insurance for at least 6.6 million people and collected almost $16 billion in direct premiums offered in 2021.[27] Because of the gaps in state and federal regulation of Medigap sales, it is currently legal for health insurers to hand out these vacations and perks as incentives.[28]

1. Offers of luxury vacations and other perks are pervasive in the Medigap market.

Insurance companies providing Medigap and other supplemental health insurance for seniors routinely offer sales agents glamorous vacations in exchange for enrolling seniors in their plans and meeting annual sales goals (**Table 1 page 7**). A staff review of publicly available information identified 32 insurers that offered, directly or through third parties, incentives for selling certain Medigap plans in 2021 and meeting annualized premium goals.

This list almost certainly underestimates the number of insurers that offer these perks because many insurers do not publicly post their giveaways. For instance, Bankers

Table 1: Health Insurers Offering Medigap Incentives in 2021 Plans	
Aetna Health & Life Insurance Co.*	Continental Life Insurance Co. Brentwood*
Aetna Health Insurance Co.*	Humana Insurance Co.
Aetna Life Insurance Co.*	Liberty Bankers Life Insurance Co.†
American Benefit Life Insurance Co.†	Loyal American Life Insurance Co.
American Continental Insurance Co.*	Lumico Life Insurance Co.
American National Insurance Co.	Manhattan Life Insurance Co.
American Retirement Life Insurance Co. (Cigna)	Medico Corp Life Insurance Co.
Americo Financial Life & Annuity Insurance Co.	Medico Insurance Co.
Amerigroup Insurance Co.	Medico Life and Health Insurance Co.
Anthem Health Plans	Mutual of Omaha Insurance Co.
Assurity Life Insurance Co.	Nassau Life Insurance Co.
Bankers Fidelity Life Insurance Co.	New Era Life Insurance Co.
Capitol Life Insurance Co.†	SILAC Insurance Co.
Central State Health & Life Insurance Co. of Omaha	Transamerica Financial Life Insurance Co.
Cigna Health & Life Insurance Co.	Transamerica Life Insurance Co.
Cigna National Health Insurance Co.	United Healthcare Insurance Co.

*Aetna Health & Life Insurance Company, Aetna Health Insurance Company, Aetna Life Insurance Company, American Continental Insurance Company, and Continental Life Insurance Company Brentwood are subsidiaries of Aetna, Inc. – a subsidiary of CVS Corporation – offering independently branded Medigap plans. Subsidiaries of Aetna, accessed on October 18, 2022, https://www.sec.gov/Archives/edgar/data/1122304/000112230415000038/exhibit21_1.htm.

† American Benefit Life Insurance Company, Capitol Life Insurance Company, and Liberty Bankers Life Insurance Company are member companies of Liberty Bankers Insurance Group. Liberty Bankers Insurance Group, accessed on October 12, 2022, https://lbig.com/about-us/company-affiliates.

Life and Casualty Company sells Medicare Supplement Insurance that is underwritten by Colonial Penn Life Insurance Company.[29] Although its public website tells prospective agents that Bankers Life offers "the opportunity to travel to exciting destinations and win great prizes,"[30] the company does not make any additional detail on these programs publicly available.

In some cases, these perks can be relatively small, such as $25 or $100 per application or enrollee.[31] But often, the bonuses are lavish and valuable. For example, Mutual of Omaha offered brokers and agents selling Medigap plans this year a chance to earn a "Sunny San Diego trip" that included "airfare, one double-occupancy standard hotel room, two hosted receptions, cash allowance and

airport transfers for two people."[32] Cigna is currently offering brokers and agents the chance to "earn the sales reward trip of a lifetime" to St.

Thomas, U.S. Virgin Islands for sales made between September 2022 and February 2023.[33] New Era will also be hosting a "Leaders Conference" in Banff, Canada where "accommodations will be the most famous hotel in town – the Fairmont Banff Springs – which is often marked as a must-see for tourists."[34]

These types of incentives are not new. Insurance providers and third-party marketing organizations have been marketing attractive offers to agents and brokers for many years. For example, Western Marketing Corporation, an organization advertising agent incentive trips, list past trips to the Bahamas in 2008, San Diego, California in 2009, and Maui, Hawaii in 2010 in addition to advertising the upcoming Los Cabos trip in 2023.[35] In 2015, Cigna advertised to its agents that the "white-sand beaches and pristine waters of Aruba await your exploration,"[36] and it still offers an incentive trip to St. Thomas, U.S. Virgin Islands today, for 2023.[37]

While the perks that the insurance companies offer for generating Medigap business vary, the basic incentive structure is the same: sell more plans for the company, earn more rewards. Bankers Fidelity offered agents and brokers the opportunity to qualify for a "Sales Leaders Conference" in London in 2022 based on their 2021 sales.[38] Brokers and agents could only qualify for the trip based on their "net issued production" of insurance products—including the sale of Medicare Supplement products.[39]

While the perks that the insurance companies offer for generating Medigap business vary, the basic incentive structure is the same: sell more plans for the company, earn more rewards.

Cigna promised that "all agents with a minimum of $225,000 in production credits" for plans sold between March 1, 2020 and February 28, 2021 would "be able to bring one qualifier and a guest" to a luxury trip to Vancouver in June 2021 where the agent could "enjoy exceptional dining and sightseeing just steps from your world-class accommodation."[40] In 2020, Cigna offered a trip to Monaco, advertising "you'll live just steps from the famed Monte Carlo Casino" for qualifying agents.[41]

In addition to Medicare Supplement Insurance, health insurers also create incentive programs to reward agents for selling Medigap plans along with additional products, such as life insurance, annuities, or other types of catastrophic health insurance. Cigna's incentive trips to Vancouver and Monaco, for example, offered agents one credit for each Medigap premium and three for its supplemental "cancer, heart, accident, and whole life" products.[42] Similarly, Aetna materials note, "Cancer and Heart Attack or Stroke" products count three for one on production.[43] Sentinel Security Life, which also provides life insurance and annuities,[44] offered its agents an opportunity to attend the "2022 Sentinel Success Summit" in Spain and the Canary Islands to experience a "legendary trip you'll boast about for years to come!" for achieving sales targets in between March 2021 and February 2022.[45]

Insurers also create extra incentives for 'persistency' in re-enrolling existing subscribers. For instance, to qualify for Aetna's 2020 trip to San Francisco, agents had to "maintain an 80 percent persistency on qualifying business."[46] Banker's Fidelity offers agents a trip to Costa Rica – but "reserves the right to withhold an invitation" if persistency falls below 70 percent.[47]

In addition to lavish vacations and experiences, many Medigap insurers also offer cash bonuses and other perks. Americo Financial Life & Annuity Insurance Company's 2021 marketing materials, for example, promised agents who produced "at least $30,000 of annualized premium between March 1, 2021 and August 31, 2021"—including Medicare Supplement production—a "bonus check."[48] Updated materials also indicate that there is a similar bonus payout for qualifying agents in 2022.[49]

These undisclosed incentives are so pervasive that several insurance marketing organizations act as clearing houses to advertise information about multiple companies' various travel incentive programs for agents to seek bonuses with.

These undisclosed incentives are so pervasive that several insurance marketing organizations act as clearinghouses to advertise information about multiple companies' various travel incentive programs for agents to seek bonuses with. Western Marketing Corporation, for example, is advertising a "Top Producers Convention" held in Los Cabos where top performing agents can "live like an icon" and "party like a rock star" at Hard Rock Los Cabos All Inclusive Resort in 2023.[50] Precision Senior Marketing lists on its website an "array of incentives" rewarding Medigap sales because agents "work hard, so at PSM we like to contribute to you playing hard as well."[51] The insurance marketing organization National Contracting Center displays on its website "the most up-to-date list of insurance agent incentives and trips anywhere on the internet."[52]

A review of these clearinghouses depicts a variety of incentive trips scheduled for 2022 and 2023 that insurers are using to incentivize brokers and agents now. Incentives for 2023 include a Mutual of Omaha trip to Maui, Sentinel Security Life's trip to Austria and Malta, Cigna's trip to the U.S. Virgin Islands, and many more.[53]

2. **Bonus perks for agents and brokers create incentives for agents and brokers to steer seniors to the wrong products.**

Agents play an important role in many seniors' Medigap decisions because "much of the information available to beneficiaries shopping for … Medicare Supplement (Medigap)… comes from agents (brokers) or health insurers."[54] An industry analysis published in August 2015 found that "nearly 60% of consumers surveyed … received assistance from a professional" to choose a Medicare Supplement Insurance plan, and "may have selected a different option after meeting with the agent."[55] Three in ten enrollees reported that they sought advice on selecting a plan or "selecting a company."[56] The analysis concluded that "the majority of the time agents clearly influence consumers' buying decisions."[57]

Reforms to protect seniors from abusive Medigap sales practices were last put in place over three decades ago under the *Omnibus Budget Reconciliation Act of 1990*.[58] These reforms limited insurers' administrative and marketing costs, and limited agent commissions during the first year of coverage to discourage "churning" of policies.[59] They also standardized plan benefits to limit the number of confusing options and make plans more easily comparable.[60]

But the incentives identified in this report undermine the intent of those protections and may induce agents to take actions that may not be in the interests of seniors.

But the incentives identified in this report undermine the intent of those protections and may induce agents to take actions that may not be in the interests of seniors. Specifically: (1) the dollar sales thresholds required to obtain rewards may induce agents to recommend more expensive plans; (2) these sales thresholds may induce agents to recommend plans from specific companies that may not be the lowest cost or most suitable for the enrollee; and (3) the "persistency thresholds" for rewards may induce agents to recommend that seniors re-enroll in plans even if switching plans would be a better option.

The most basic incentive established by these perks and bonuses would induce agents to sell more expensive plans. The cost of plans offered by the same company can vary dramatically because they offer different levels of benefits. For example, for a 65-year-old, non-smoking woman in Florida, the median annual premium for 2021 Medigap Plan K—which offers the least generous benefits—is $1,038, whereas the medium premum for a 2023 Medigap Plan F—

which offers more generous benefits—is $852.[61] But sales agents must meet certain thresholds to qualify for vacations – for example, agents must sell $250,000 worth of coverage to qualify for Mutual of Omaha's vacation rewards.[62] Therefore, to meet that minimum threshold, there is a clear incentive structure to sell more expensive plans. This sets up a clear conflict of interest for agents in cases where the best option for seniors might be the least expensive plan.

> Pushing seniors to purchase Medigap from one company over another can have real consequences when they enroll in plans that are unaffordable or do not meet their needs.

Another conflict may occur when agents push seniors to enroll in a plan from the company that best suits their own personal interest. Some agents work for a single company, and many seniors seek coverage from a company with which they are familiar. In other cases, agents and brokers sell products from multiple companies,[63] and seniors are simply seeking the standardized plan that offers the best benefits and lowest costs regardless of the offering company. If an agent is close to a sales threshold that would qualify for a vacation or other giveaway from one company, but a different company's Medigap product is less expensive, that agent may have a conflict of interest. Pushing seniors to purchase Medigap from one company over another can have real consequences when they enroll in plans that are unaffordable or do not meet their needs.

The choice of one insurer over another can have significant financial implications for seniors. In one 2015 study, economists found that "[e]ven though Medigap plans are standardized and selection is limited due to guaranteed issue, there is substantial price variation across insurers within states. For instance, a 65-year-old woman living in Indiana could expect to pay anywhere between $1,223 and $3,670 for a Medigap Plan F policy in 2009, depending on her choice of insurer."[64] And a Kaiser Family Foundation analysis of Medigap premiums in five states found that between 17 and 80 percent of enrollees in Medigap plans were not enrolling in the least expensive plan.[65]

Pushing seniors toward one company over another may also have a detrimental effect on the coverage they receive because not all insurance companies carry all standardized plans.[66] For instance, in 2017, more than half of all Medigap beneficiaries were enrolled in Plan F and Plan G – the most comprehensive plans that cover all Medicare copayments, deductibles, and excess charges.[67] But some seniors may do better with a plan that has lower premiums and still offers predictable out-of-pocket costs, such as Plan N, where beneficiaries pay $20 co-payments for some visits to the doctor's office. Plan N is offered by over half of insurers in the Medigap market.[68] A senior may not even know of the existence of Plan N if their insurance agent is pushing Medigap policies from a company that does not offer it.

> ...seniors may find themselves stuck with the first Medigap plan they signed up for—even if they ultimately identify a plan that better meets their needs.

It is especially troubling that once seniors sign up for a Medigap plan, potentially as a result of inadequate or inaccurate advice, they may have trouble switching to another plan. Federal law provides seniors who are 65 and older with "guaranteed issue" protection during the first six months of their Medicare B enrollment period and during a few additional qualifying periods.[69] "Guaranteed issue" protections prohibit Medigap insurers from "deny[ing] a Medigap policy to any applicant based on factors such as age, gender or health status" and from "vary[ing] premiums based on an applicant's pre-existing medical conditions."[70] However, outside of these periods, federally-mandated guaranteed issue protections disappear. While states "have the flexibility to institute Medigap consumer protections that go further than the minimum federal standards," many do not.[71] As a result, seniors may find themselves stuck with the first Medigap plan they signed up for—even if they ultimately identify a plan that better meets their needs.[72]

In addition, because insurance companies differ in how they use a customer's age to set premiums, a senior's decision to purchase Medigap from one insurance company over another may result in much higher premium payments. An 80 year-old may be better off purchasing a policy through a company with a community rating option, where all beneficiaries pay the same rate. But an agent acting in self-interest could have plenty of incentives to sell that 80 year-old a policy from an insurer with a higher premium if that company is offering an industry-sponsored vacation.

> An agent seeking to meet these thresholds may be disincentivized to advise a senior to switch Medigap plans even if it is in that senior's best interest to do so.

Finally, the incentives given to agents may discourage them from giving the best advice on even switching plans. In order to receive many of the vacation and other bonuses offered by insurers, agents must meet "persistency" thresholds requiring that a certain percentage of enrollees re-enroll in the same company's plans. An agent seeking to meet these thresholds may be disincentivized to advise a senior to switch Medigap plans even if it is in that senior's best interest to do so.

> These incentives present a shortcoming of Medigap that places seniors at a disadvantage, and a need to expand Medicare to help them find the most cost-effective plans that meet their health care needs.

Seniors seeking advice about all of their options for supplemental health insurance are competing with powerful incentives to push particular insurance products. As detailed above, an agent who is just a few points away from attaining an incentive trip—or is at risk of losing incentives by virtue of not retaining enough existing subscribers—may be swayed by the opportunity to earn the incentive rather than informing a senior of other Medigap plans that would better suit the enrollee's needs or that may be offered by other companies. These incentives present a shortcoming of Medigap that places seniors at a disadvantage and further demonstrates the need to expand benefits and reduce out-of-pocket costs in traditional Medicare.

3. Bonus perks for agents and brokers are legal and minimally regulated.

Agents and brokers offering Medicare Advantage and Medicare prescription drug benefits can also receive perks for selling beneficiaries certain plans. These perks, like those in the Medigap market, are problematic. However, the federal laws regulating Medigap bonuses and perks are less stringent than those provided for Medicare Advantage and Part D sales.

At the federal level, CMS adopted regulations governing compensation for brokers and agents selling Medicare Advantage and Medicare Part D plans in 2014.[73] Congressional hearings and federal audits revealed that tens of thousands of Medicare beneficiaries had been victims of predatory marketing tactics and that insurance agents and brokers received lucrative incentives for steering seniors into these plans.[74] When Congress passed the *Medicare Improvement for Patients and Providers Act* in 2008, it directed CMS to ensure that agent and broker compensation creates incentives to enroll seniors in plans that are "intended to best meet their health care needs."[75] Most recently, in August 2022, the Senate Finance Committee launched an inquiry into potentially deceptive marketing tactics practiced by Medicare Advantage plans that may take advantage of seniors looking for Medicare coverage.[76] The committee sent letters to 15 state insurance commissioners and state health insurance assistance programs requesting data about marketing complaints and other information.[77]

When CMS adopted its final rule promulgating the Medicare Part C and D regulations enacted in 2014, the agency included a discussion of the "significant role" that agents and brokers play in "providing guidance and advice to beneficiaries," and their "unique position to influence beneficiary choice."[78] CMS also noted, "[o]ur program experience indicates that some agents may encourage beneficiaries to enroll in plans that offer higher commissions without regard to whether plan benefits meet the beneficiaries' needs."[79] To address these concerns, the final rule promulgated by CMS, though still allowing for considerable compensation payments to agents and brokers, revised the compensation structure for selling Medicare Advantage and Medicare Part D plans. Federal regulations require insurers to provide their compensation structures to CMS "upon… request," "including for audits, investigations, and to resolve complaints."[80] They also prohibit referral fees—a form of compensation—that "could reasonably be expected to provide financial incentive for an agent or broker to recommend or enroll a beneficiary into a plan that is not the most appropriate to meet his or her needs."[81] Additionally CMS set forth a final rule in the Contract Year 2023 Medicare Advantage and Part D Policy and Technical Changes that strengthened CMS's responsibility to protect beneficiaries and ensure they are provided with accurate and secure information by holding plans accountable to detect and prevent the use of confusing or potentially misleading marketing tactics by third-party organizations.[82]

Seniors in the Medigap marketplace also look to agents and brokers for advice and guidance—yet federal regulations provide them with less security from these undisclosed incentives, and only a handful of states have acted to protect consumers.

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Federal law requires states to, at a minimum, "meets or exceed" model regulations drafted by NAIC in regulating Medicare Supplemental Insurance plans.[83] But this model regulation explicitly allows "bonuses, gifts, prizes, awards and finders' fees."[84] Furthermore, while it does require agents to "make reasonable efforts to determine the appropriateness of a recommended purchase or replacement"[85] and places some limits on commissioners to "discourage 'churning' of policies,"[86] it does not explicitly prohibit compensation schemes that could lead to the sale of inappropriate Medigap plans. CMS decisions about whether to certify Medicare Supplement Insurance policies are largely based upon compliance with these NAIC standards, and the agency has not yet acted to ban these undisclosed incentives.[87]

Individual state insurance regulators have primary oversight and enforcement responsibilities over the Medigap market and can go beyond the NAIC model regulations. To protect the interests of seniors in the Medigap marketplace, some states have enacted laws and promulgated regulations governing the conduct of agents and brokers. The California Insurance Code, for example, holds that "all insurers, brokers, agents, and others engaged in the business of insurance owe a policyholder or a prospective policyholder a duty of honesty, and a duty of good faith and fair dealing."[88] The Ohio Administrative Code prohibits agents and brokers from making any incomplete comparison to induce a Medicare-eligible person to purchase or change insurance.[89] The Maine Bureau of Insurance establishes standards for marketing of Medigap to ensure "excessive insurance is not sold or issued" and that any comparison of insurance policies is "fair and accurate."[90] However, even these states do not explicitly ban the use of perks and incentives as rewards for enrolling seniors—and not every state has put similar consumer protections in place. As a result, the Medigap insurers are able to continue offering perks and bonuses, and agents and brokers are able to exploit seniors to receive them.

V. Conclusion

Millions of seniors are forced to rely on private Medigap plans to pay for health care that is not covered by Medicare, and health insurers collect billions of dollars per year in premiums from these policies. An agent or broker who is focused on selling enough of one company's Medigap products to earn their next vacation is an agent who is not focusing entirely on finding the best plan for an individual senior. Seniors' retirement security depends on high-quality Medicare coverage. At a minimum, CMS must institute reforms to eliminate the serious conflicts of interests that exist for agents selling Medigap plans, but these problems also underscore the need to expand and strengthen traditional Medicare so that seniors get the full spectrum of care they need.

This staff investigation finds that, in exchange for selling seniors Medigap policies and meeting sales quotas, private insurance companies routinely award expensive vacations and other undisclosed incentives, creating the wrong incentives for agents and brokers. It also reveals that gaps in federal law, combined with inadequate state regulations, result in these incentive schemes that do not adequately protect seniors.

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