Dear Chairman Neal:

Thank you for your letter of June 3 asking for the NAIC’s input on information about the options for developing a new Medigap or Medigap-like product with front-end long-term services and supports (LTSS) benefits for seniors and people with disabilities who are enrolled in Medicare.

The NAIC is very encouraged the Committee has reached out seeking our expertise and to provide our input. We applaud your efforts on this issue and stand available to assist you and Congress.

Your letter was forwarded to the NAIC’s Senior Issues Task Force (Task Force) for review and consideration. The Task Force is charged with considering policy issues related to Medigap, long-term care insurance, senior counseling programs and other insurance issues that affect older Americans, among many other responsibilities and duties.

Your letter asked for information on the following factors and considerations:

- Affordability, sustainability, and implications for adverse selection
- Eligibility triggers
- Benefit design
- Participation rates
- Interaction with the existing Medigap options
- Special enrollment periods

The Task Force discussed these factors and considerations at length by open conference call with a variety of stakeholders, including consumer representatives, industry, regulators and other interested parties. The Task Force received many comments and finds the Committee’s exploration of including a LTSS benefit in Medigap intriguing. While the Task Force is aware and in agreement with the Committee that a large majority of seniors age 65 and older will need help with some basic LTSS, such as bathing and dressing, in their lives, the Task Force did express some concerns about possibly expanding LTSS availability in Medigap. The following are some of the concerns and observations the Task Force had.
Medigap was developed to fill in the gaps in the Medicare program. The nursing home benefit in Medicare is there to provide coverage while the beneficiary is recuperating from an occurrence. Although Medicare is covering more home health care and skilled nursing facility coverage than it used to -- 3% to 5% of the Medicare program costs in 1988 and up to 22% in 2011 -- the nature of the coverage could significantly change by adding a LTSS benefit since Medicare does not cover long-term care.

Currently seniors choose whether to supplement Medicare with more of a full-coverage health plan using Medigap and the premiums are not necessarily cheap. Providing LTSS and adding it to Medigap without some way to address or mitigate the additional cost could price many Medicare beneficiaries out of the Medigap marketplace.

Because premiums must be set at an amount to ensure they can cover potential medical claims, simply adding a LTSS benefit to Medigap could cause beneficiary premiums to increase significantly. This could put many Medicare beneficiaries at financial risk because of the significant gaps in Medicare coverage currently addressed by Medigap. If Medigap is priced out of the consumers’ reach, the number of persons not seeking needed care probably will go up.

The Task Force feels the Committee should carefully consider whether adding a LTSS component to Medigap would be a requirement or not. A requirement could create a prohibitive cost that leaves seniors underinsured for basic health insurance coverage because they end up choosing not to pay the higher premiums and could cause market disruption if Medigap insurers who do not want to accept long-term care risks leave the market. As the Committee is probably aware, approximately 1/3 of Medicare beneficiaries rely on Medigap. If the goal of the Committee is to expand the availability of LTSS, then such a proposal would only “reach” 1/3 of those seniors with traditional Medicare.

If LTSS is not to be a requirement in all Medigap plans, then anti-selection could be an issue. Anti-selection could be more complicated if there is a Special Enrollment Period (SEP) offered to current Medicare beneficiaries with Medigap plans versus just offering this to newly eligible individuals. Another factor the Committee may want to consider is whether companies could be allowed to introduce an age rating in any SEP. If there is not an age rating, then pricing could be very difficult. The effect of an optional and/or a mandated benefit on Medigap could also vary depending on the level of benefits covered or defined.

Another consideration for the Committee is that Medigap and long-term care are not priced the same. Long-term care has pre-payment as most of the benefits are received at age 80 and above while healthcare costs under Medigap do not have as steep of a claim cost curve. In addition, Medigap is sometimes made available with attained age premium schedules which probably would not work for the LTSS component because of the steep claim cost curve.

The Committee should keep in mind the importance of the states’ role in regulating Medigap. Since Medigap benefits are standardized, the long-term care component of the benefit package would also need to be standardized. If not, there could be a negative impact on the benefits experienced in Medigap due to standardization. As you are aware, each state establishes fundamental standards that reflect the needs and desires of its population. Some states have opted to maintain federal Medigap
minimum standards while others have expanded those standards, such as the inclusion of guaranteed issue provisions or choosing to implement community rating or issue age (or attained age) rating.

Additionally, many states also have their own long-term care insurance laws and regulations, separate from Medigap laws and regulations. Adding LTSS as a standard Medigap benefit may raise conflicts or confusion between consumer protections that are available to separate long-term care plans versus Medigap plans with LTSS. The Committee should carefully consider how non-uniformity could impact the pricing of LTSS benefits and the Task Force believes it is critical for states to maintain their regulatory authority and flexibility regarding Medigap requirements in order to best serve their local Medicare beneficiaries.

The Task Force feels the Committee may need to consider the possibility that carriers may not want to write Medigap policies if they are required to offer LTSS benefits. As the Committee is probably aware, many Medigap carriers currently do not offer LTSS-style benefits in the market today and do not have the expertise to price LTSS benefits.

Claims adjudication could be significantly affected by adding LTSS to Medigap. Currently, Medigap claims processing is quite straightforward -- if Medicare pays, the Medigap carrier pays under the terms of the policy. However, long-term care claims processing is much more complicated than Medigap claims processing. Insurers could be required to have a claims adjudication process in place that meets the needs of their policyholders who trigger the long-term care benefit. This may include service provider selection, benefit trigger verification, claimant assistance, just to name a few. The infrastructure to provide such adjudication processing probably would be significant and costly.

The Committee should also consider that adding a LTSS benefit to Medigap may discourage early planning for long-term care. Waiting to obtain LTSS coverage until one is a senior and more likely to be retired is probably too late and probably would be prohibitively expensive. The NAIC believes that education is needed to encourage younger individuals to plan for long-term care needs early so that it is more affordable and already available if and when they need it.

The Task Force wonders if the Committee has contemplated whether to have a portion of a LTSS component added to Medicare rather than fully through Medigap. Medigap providers benefit from claims first going through Medicare, so the claims adjudication is very streamlined for Medigap. The LTSS benefit, if not shared by Medicare at any level, could require Medigap providers to implement enhanced claims management systems that may be prohibitive and force some out of the market.

While many of the comments received by the Task Force had concerns about expanding LTSS availability in Medigap, these same comments also share the Committee’s desire to identify ways to make Americans’ long-term care needs more affordable.

I hope our comments and observations will help you and your staff as you consider this legislative proposal and I encourage your committee and Congress to utilize the NAIC as a primary resource for any insurance and insurance-related questions or proposals.
Sincerely,

Eric A. Cioppa – President
National Association of Insurance Commissioners
Superintendent, Maine Bureau of Insurance