



May 18 2026

Commissioner Ned Gaines, Chair
Senior Issues Task Force

Commissioner Jon Godfread, Vice-Chair
Senior Issues Task Force

Atten: David Torian, NAIC Support Staff

Memo: The Birthday Rule and Medigap Insurance

Dear Commissioners Gaines and Godfread: :

In my capacity as a senior issues consultant and as a NAIC Consumer representative, consumer groups, agencies, and individuals from around the country reach out to me for assistance with problems involving Medigap insurances coverage. In California as a consultant to California Health Advocates, I provide technical assistance on Medigap insurance to our state SHIP known as HICAP, and to other groups and agencies throughout California. As a result of this work I often talk directly to individuals in California and other states who have experienced a problem with Medigap insurance.

During the most recent Annual Enrollment Period (AEP) and continuing this year I've heard about a number of complaints concerning the actions of insurers and agents in handling Medigap inquiries and applications. A common complaint is that agents representing certain insurance companies don't return calls about enrolling in a Medigap policy or misrepresent their right to a guaranteed issue Medigap when they have a guaranteed issue right in their state. Complaints about insurers include failure to process an application in a timely way, delaying issue dates that create gaps in coverage, and falsely applying health underwriting during a guaranteed issue period. This information comes from consumers in multiple states. While these complaints are informal and anecdotal they may reveal developing trends resulting from insurer attempts to limit enrollment in certain Medigap plans.

The Birthday Rule was signed into law in California in 1996. California was likely the first state to enact this rule and today 16 states have implemented this protection. The Birthday Rule in most state simply allows Medicare beneficiaries who have a Medigap plan the annual opportunity to switch to a less expensive Medigap with the same or fewer benefits without having to undergo health underwriting. Supplemental coverage is a critical protection that allows beneficiaries to budget their health care expenses through a monthly premium, and protect themselves and their family from financial disaster if they have a serious medical event. The Birthday Rule gives consumers the flexibility to adapt their Medigap coverage as their financial needs change.

As the Task Force begins discussing the Birthday Rule it's important to keep in mind that there are a number of marketplace actions that can create problems for consumers in addition to premium increases. For instance, insurers can make an application process difficult or create delays that cause applicants to go elsewhere or to exceed the state's time limit to switch coverage.

Insurers can and did, according to [multiple press reports](#), cut or reduce commissions for certain Medigap Plans during last year's AEP, causing some agents and brokers to drop those products from their inventory. A reduced number of available Medigap plans can limit the ability to switch coverage using the Birthday Rule.

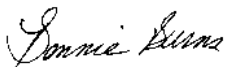
In some states that allow younger Medicare beneficiaries access to certain designated Medigap plans insurers responded by withdrawing or closing those plans, leaving Medigap Plan A as the only option at the highest premium cost and with fewest benefits. Beneficiaries that have a Medigap Plan A are limited in their use of the Birthday Rule since every other Medigap plan has more benefits than Plan A and therefore not an option.

Beneficiaries in states where insurers only offer a few of the 10 Medigap plans may not be able to use the Birthday Rule to reduce their premium cost if the only Medigaps available to them have fewer benefits than their current Medigap plan.

Premium increases are an important topic for consumers and insurers alike. While expanded access to Medigap coverage plays a small part in premium costs, its not the only cost driver of those premiums. The Birthday Rule is an important (and already limited) protection to guard against what can be unlimited consumer cost sharing in Medicare. I encourage the Task Force to examine all the reasons Medigap premiums are increasing and the actions taken in response to the rising costs.

The Birthday Rule should not be used as a vehicle to discourage states from considering or enacting broader access to important consumer coverage. The Birthday Rule has been a right in California for 30 years, I'm happy to answer any questions that Task Force members may have.

Sincerely,



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