September 21, 2011

The Honorable Patty Murray
Co-Chair, Joint Select Committee on Deficit Reduction
United States Senate
Washington, DC 20510

The Honorable Jeb Hensarling
Co-Chair, Joint Select Committee on Deficit Reduction
U.S. House of Representatives
Washington, DC 20515

Dear Senator Murray and Representative Hensarling:

On behalf of the National Association of Insurance Commissioners (NAIC), we are taking this opportunity to express our concerns regarding the debt reduction debate and supplemental health insurance for Medicare beneficiaries. The NAIC is the organization of insurance regulators representing the 50 states, the District of Columbia and five U.S. territories. As you know, state insurance regulators are vested with the responsibility of protecting insurance consumers in their states and territories. State regulators presently enforce standardized Medicare supplement insurance policies and have worked with Congress over the past 20 years to ensure adequate protection for Medicare beneficiaries utilizing supplemental insurance. Therefore, the NAIC is pleased to provide these comments, which we believe represent the interests of Medicare beneficiaries.

The NAIC has been following the debt reduction discussions closely as they relate to issues within the jurisdiction of State insurance commissioners. The NAIC has very serious concerns about a proposal prohibiting Medicare supplement (Medigap) insurance products from providing so-called "first dollar" coverage of Medicare cost-sharing.

Medigap insurance products have been subject to a multitude of changes over the past several years that keep seniors constantly in need of counseling to understand. Historically, those changes have always been made prospectively and have never been applied to existing ("in force") policies. However, some of the proposals being discussed intend to affect some seven million senior policyholders of in force policies in an unprecedented fashion. Such a stance is extremely problematic for a number of reasons.

Federal and state law mandates that Medigap insurance is guaranteed renewable. Guaranteed renewability ensures a stable market because seniors can keep their existing benefits by simply continuing to pay their premiums on time. An abrupt alteration of the Medigap cost-sharing benefits for in force policies will cause a major market disruption and cause serious confusion for seniors. Medigap policyholders will look to their state insurance regulators for assistance and to their congressional representatives for answers when they find out that the guaranteed renewability provisions of their Medigap policies have not been honored. The so-called first dollar coverage contained in Medigap policies has been factored into the premium payments of these Medigap policyholders. Now, by federal law, in the name of deficit reduction, these senior citizen Medicare-eligible citizens would not have a benefit for which they have already paid, in many cases, for years.

Other consequences of amending in force Medigap policies are that it will raise legal issues such as whether premium refunds need to be paid and it will add administrative expenses associated with the payment of claims filed during any transition period and pending claims where treatment was begun under the old coverage but submitted after the changes. There are also legal issues raised under the Constitution regarding the impairment of contracts, due process, and the taking of valuable benefits under in force policies. These issues will encourage litigation by policyholders, insurers, and other interested parties.

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The NAIC understands the current constraints in seeking budgetary savings. The States have been having these same debates. For reasons outlined above, the NAIC believes that changes of this nature to Medigap insurance coverage on a retrospective basis would be detrimental to seniors.

The NAIC is also concerned about making such changes on a prospective basis. It is important to note that the proposed changes will impact cost-sharing coverage for "medically necessary" services. By contract, Medigap policies only pay cost-sharing for items and services that Medicare itself has already determined to be medically necessary. The NAIC is concerned that the effects of this proposal will result in many seniors foregoing needed medical care because they cannot afford the care resulting in more costs to the Medicare program later on. Additionally, the proposal will simply shift more costs onto seniors (who by and large are not wealthy) and not address the underlying cause of increased medical costs.

The NAIC appreciates the role given to it by Congress in the Social Security Act in recommending changes to Medigap products, and hopes to continue that role in the future. After recommendations by the NAIC as a result of the conference committee report for the Medicare Modernization Act, new products M and N with more cost-sharing were introduced into the market on June 1, 2010. However, these products have only been in the market for a little over a year and have not had time to develop fully credible experience to gauge their effect on the Medicare program, the Medigap market and consumers.

We appreciate the opportunity to express our concerns on this issue. If you have any questions, please do not hesitate to contact Brian Webb of the NAIC staff at 202-471-3978 or bwebb@naic.org.

Sincerely,

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