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The Medicare Problem: A Solution to Insolvency

I. INTRODUCTION

*To he that hath ears,
Let him hear; he that hath not:
Medicare Part B*

In this demagogues and diplomats agree: a social safety net should exist to protect the most vulnerable Americans. Since its enactment in 1965, Medicare has provided such a safety net in the form of a single-payer, national health insurance program for Americans over the age of 65.¹ In 2016, Medicare comprised 15% of the federal budget—\$678.7 billion—and covered 56.8 million Americans.² Although health care costs remain a major financial strain on the elderly and disabled, lawmakers have sought to alleviate that burden through a series of Medicare programs. These benefit programs are paid out of trusts largely funded by general tax revenue, payroll taxes, and premiums associated with Medicare plans.³

Although most current beneficiaries paid into the Medicare trusts for years or decades while in the workforce, today's workers are presently funding the trusts that pay out today's benefits, effectively subsidizing the previous generation's health care.⁴ Unfortunately, current estimates project that one of the trusts that covers a large portion of Medicare (the Hospital Insurance (HI) trust fund) will become insolvent by 2029, potentially collapsing the very program that older Amer-

1. *Medicare and Medicaid Milestones, 1937-2015*, 1 CTRS. FOR MEDICARE & MEDICAID SERVS. 9, 2 (2015), <https://www.cms.gov/About-CMS/Agency-Information/History/Downloads/Medicare-and-Medicaid-Milestones-1937-2015.pdf>.

2. OFF. OF THE ACTUARY, THE 2017 ANN. REP. OF THE BOARDS OF TRS. OF THE FED. HOSP. INS. AND FED. SUPPLEMENTARY MED. INS. TR. FUNDS 7 (2017); *See also* Juliette Cubanski & Tricia Neuman, *The Facts on Medicare Spending and Financing*, KAISER FAM. FOUND. (June 22, 2018), <https://www.kff.org/medicare/issue-brief/the-facts-on-medicare-spending-and-financing/>.

3. OFF. OF THE ACTUARY, *supra* note 2, at 10.

4. *Id.* at 214; *see also* Juliette Cubanski et al., *A Primer on Medicare: Key Facts About the Medicare Program and the People It Covers*, 1 KAISER FAM. FOUND. 40, 1 (2015), <http://files.kff.org/attachment/report-a-primer-on-medicare-key-facts-about-the-medicare-program-and-the-people-it-covers>.

icans have paid into for years and expected would be available for support and stability as they settle into old age.⁵ Given the looming insolvency of Medicare, saving it will likely require reformation in one way or another.⁶

One of the primary factors for the projected insolvency is that the large demographic of persons born shortly after WWII (commonly known as “baby boomers”) have now become, and will continue to become, eligible for Medicare.⁷ Current estimates of labor force participation rates project that payroll taxes from the estimated labor force, which comprise a large portion of revenue for the trust, will be insufficient to carry the weight of the influx of new beneficiaries.⁸ There is thus an immediate actuarial problem that requires intensive analysis to determine the health of the trust and proposals to correct it. More difficult still is the political problem of crafting a piece of legislation that can “fix” Medicare that can actually pass both chambers of Congress for signing into law without being killed by the many “veto-gates” available along the way.

To say that Medicare is a hyper-partisan issue is a gross understatement. It is the political equivalent of the Ark of the Covenant, certain to instantly kill the career of any politician who attempts to steady it.⁹ Americans age fifty-five and older are historically the most reliable voting demographic.¹⁰ The Medicare issue is volatile, and most lawmakers savvy enough to get elected in the first place understand that alienating that demographic by changing their health care is an easy way to lose an election. Understandably, current and soon-to-be Medicare beneficiaries do not want their premiums raised, their benefits reduced, or their taxes increased. After all, beneficiaries did not spend their working lives paying into Medicare only to have the trust diluted at the moment that they finally need it by miscalculations of politicians and bureaucrats.

5. OFF. OF THE ACTUARY, *supra* note 2, at 7.

6. *Id.* at 2.

7. *Id.* at 214.

8. *Id.*

9. 2 *Samuel* 6:6; Tim Reid, *Lawmakers Run Scared from Reforming Medicare*, REUTERS (May 26, 2011, 2:14 PM), <https://www.reuters.com/article/us-usa-debt-medicare-idUSTRE74P7PY20110526>.

10. *Voting in America: A Look at the 2016 Presidential Election*, U.S. CENSUS BUREAU (May 10, 2017), https://www.census.gov/newsroom/blogs/random-samplings/2017/05/voting_in_america.html.

A viable proposal to fix Medicare must at least feign bipartisanship, or perhaps affix a big carrot and a corresponding bigger stick. Since Medicare reform would profoundly affect the lives of millions of Americans who depend on the program, a proposal should also be as generous and gradual as possible while still maintaining the viability of the program to not excessively burden beneficiaries. Section III of this paper offers in part, such a proposal that could be appended to a more comprehensive and robust Medicare reform bill. Passing a controversial, behemothian piece of health care legislation may seem impossible, but recycling some of the tactics used to pass the Patient Protection and Affordable Care Act (ACA) discussed below can serve as a model in some respects going forward.

II. THE PROBLEM

*To any problem,
A due solution follows.
Alas! Medicare!*

Understanding Medicare's solvency problem first requires a sense of its sources of revenue and costs. Like many government programs, revenue and costs for Medicare Part A are variable. For example, revenue for the program may fluctuate with taxes that the federal government receives from payroll, which also fluctuates depending on wages and labor participation. Costs likewise fluctuate due to health care prices, enrollment and enrollment rates, and mortality rates. Additionally, both costs and revenue are dependent on changing statutes and regulation. As laws change, Medicare's viability may be strengthened or weakened. Regardless, reports from government agencies on the future viability of Medicare rest on certain assumptions in contemporaneous law. When any of those laws are changed, the analysis must be revised to account for the changes. This section also demonstrates how changes to those assumptions in health care law may have a profound impact on the viability of Medicare.

A. Sources of Revenue

The Boards of Trustees (the Trustees) of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds released an annual report (the Report) in 2017 on the financial status

of the trusts.¹¹ According to the Trustees, the Hospital Insurance (HI) trust fund is estimated to be depleted in 2029 according to *intermediate* health care cost models, meaning that expenditures will have exceeded revenue long enough to exhaust all assets within the trust.¹² Medicare is funded by two separate trusts, namely the HI trust fund and the Supplementary Medical Insurance (SMI) trust fund, which the Trustees project will remain in financial balance for the foreseeable future.¹³ The SMI trust fund covers Parts B and D of Medicare.¹⁴ Part B covers costs associated with physicians, outpatient hospital treatment, and home health services while Part D covers prescription drugs.¹⁵ The HI trust fund (the trust estimated to deplete in 2029), however, covers Part A of Medicare, which helps pay for costs associated with hospital stays, home health services following hospital stays, skilled nursing facilities, and hospice care.¹⁶ While the financial outlook for the SMI trust fund is good, the outlook for the HI trust fund is not, and this is where the Medicare problem can be isolated for inspection. In 2016, Medicare Part A, which is entirely funded by the HI trust fund, accounted for \$285.4 billion of the \$678 billion of total Medicare expenditures.¹⁷ In other words, the HI trust fund, which is in jeopardy, covers a little more than 40% of Medicare in its entirety.

Due to the differences in nature between Part A and Parts B and D, not only are the revenue sources for the HI trust fund and SMI trust fund different, but legal mechanisms exist to ensure that Parts B and D are sufficiently covered for each fiscal year.¹⁸ The nature of Part A simply does not accommodate the existence of such mechanisms, which is a major cause for alarm for the HI trust fund. Part A or the HI trust fund (which total revenue in 2016 was \$290.8 billion) is funded primarily by payroll taxes (87.2% of total HI trust fund revenue), interest on trust assets (2.6%), taxation on social security benefits (8%), premiums (1.1%), and general revenue, which is money from the U.S. Treasury (.4%).¹⁹ In contrast, Parts B and D (which total revenue for 2016 was a combined \$419.4 billion) do not receive revenue

11. OFF. OF THE ACTUARY, *supra* note 2.

12. *Id.* at 7.

13. *Id.* at 34.

14. *Id.* at 1.

15. *Id.*

16. *Id.*

17. *Id.* at 10.

18. *Id.* at 31.

19. *Id.* at 10.

from payroll taxes or taxation on social security.²⁰ Rather, they are almost entirely funded by U.S. Treasury general revenue (75.8% of total SMI trust fund revenue) and premiums (20.5%).²¹

The differences in nature discussed earlier which provide for the different sources of revenue for the HI trust fund and the SMI trust fund rise in part from the fact that Parts B and D of Medicare are voluntary programs, while Part A is generally compulsory.²² This necessarily means that Parts B and D will receive larger portions of revenue from premiums since beneficiaries of those Parts volunteer to pay a monthly premium.²³ Moreover, the legal mechanisms discussed earlier require that transfers from general revenue sufficiently cover the following year's estimated expenditures for Parts B and D.²⁴ Whereas payroll taxes are the primary source of revenue for Part A, Parts B and D are budgeted many years earlier. And because many Part A factors—such as future wages, labor participation rates, and death rates—are more difficult to predict many years in advance, budgeting Part A out of the general revenue is less practicable.²⁵ Furthermore, tax rates on employees and employers are not adjusted annually to meet the demands of the HI trust fund.²⁶

However, while uncertainty plagues the HI trust fund, the Trustees are not completely without projections and tools for analysis to determine the future stability of Medicare. Estimates on enrollee rates, labor force participation rates, wages, and payment restrictions in the ACA were factors in assessing the future adequacy of Medicare.

B. Enrollment and Labor Participation

“Baby boomers” or “boomers” are those persons born during the period immediately following WWII through the mid-1960s.²⁷ Since Boomers were born between the years 1945 and 1965, and the age of eligibility for Medicare is sixty-five years, Boomers began enrolling in Medicare in 2010 and will continue to do so through 2030. The

20. *Id.*

21. *Id.*

22. *Id.* at 31.

23. Cubanski et al., *supra* note 4, at 2.

24. OFF. OF THE ACTUARY, *supra* note 2, at 31.

25. *Id.* at 31, 12.

26. *Id.* at 18.

27. *Id.* at 64.

Boomer population peaked in the early 2000s at over seventy-five million and began to taper off shortly thereafter. But by 2029, 20% of the total U.S. population will be over the age of sixty-five, and therefore eligible for Medicare.²⁸ In 2000, approximately thirty-nine million Americans were enrolled in Medicare, and by 2030 (the year after HI trust fund depletion), intermediate projections of enrollment will surpass eighty million, more than double the enrollment from 2000.²⁹

Making matters worse, the average per beneficiary cost (ABC) is likewise expected to rise, compounding the enrollment issue.³⁰ In 2000, the ABC of Part A alone was \$3383, and by 2025, intermediate projections will reach \$6735, more than double the ABC from 2000.³¹ Within the next twelve years, the number of enrollees will also double for Part A. Additionally, in the next seven years, the ABC will also double. And while the HI trust fund enjoyed a net positive change in trust assets in 2016, intermediate cost estimates project that that trend will only last until 2022. Beginning in 2023, the net changes in assets is expected to become negative, and more so each subsequent year until the trust is completely depleted six years later in 2029.³² This means that in 2029, the HI trust fund will not be able to cover all of its obligations to Part A.³³ Instead, it will only be able to meet 88% of its payments, and even less in subsequent years.³⁴ The HI trust fund's predicted inability to meet its payment obligations is directly due to the unprecedented growth of enrollees, spikes in ABC, and estimates of increased life expectancy. And because Part A is mostly funded by payroll taxes, the program will be unable to meet the higher demand since³⁵ current and projected labor participation rates, wages, and payroll tax revenue will simply not be enough to carry the costs beyond 2029.³⁶

28. Sandra L. Colby & Jennifer M. Ortman, *The Baby Boom Cohort in the United States: 2012 to 2060*, 1 U.S. CENSUS BUREAU 16, 1 (2014), <https://www.census.gov/prod/2014pubs/p25-1141.pdf>.

29. OFF. OF THE ACTUARY, *supra* note 2, at 183.

30. *Id.* at 197.

31. *Id.*

32. *Id.* at 54.

33. *Id.* at 41.

34. *Id.*

35. *Id.* at 214.

36. *Id.* at 62.

Between 2005 and 2016 (dates coinciding with the Great Recession), the ABC was higher than income rates. That makes sense because lower employment rates and wages during the recession reduced taxable income, which in turn put a financial strain on the HI trust fund.³⁷ However, economists generally agree that in 2017 the economy took a turn for the better, and income rates surpassed cost rates for the first time in over a decade.³⁸ Even as the economy steadily improves, it will fall woefully short of the rate that boomers are expected to enroll in Part A.³⁹ In fact, intermediate estimates show that while income rates will exceed cost rates for a few more years, 2021 will be the first year income rates will again fall behind cost rates, and the gap between rates will only grow larger for the foreseeable future.⁴⁰

While many economists predict that employment rates and wages are expected to rise during the post-recession recovery, the labor and wage growth rates will be outpaced by the HI trust fund demands as more boomers reach the age of eligibility for Medicare with corresponding higher ABC levels. From 1980 and 2008, there were roughly four workers per each beneficiary.⁴¹ For example, the average labor force in 2000 was 141 million, while the number of beneficiaries was 39.9 million, allowing for roughly 3.5 workers per beneficiary.⁴² By 2030, however, the workers per beneficiary will decline to 2.4 and constantly decrease thereafter to 2.1 in 2091, which is how far the Trustees' projections extend.⁴³ This is in large part due to the fact that as boomers age and the labor force gets older, the overall participation rate is expected to drop to 61% in 2026 from its peak of 67.1% in 2000.⁴⁴

37. *Id.* at 64.

38. *Id.* at 62.

39. *Id.*

40. *Id.*

41. *Id.* at 64.

42. Mita Toossi, *A Century of Change: The U.S. Labor Force, 1950-2050*, 15 MONTHLY LAB. REV. 28, 15 (2002), <https://www.bls.gov/opub/mlr/2002/05/art2full.pdf>; *Medicare 2000: 35 Years of Improving Americans' Health and Security*, 1 HEALTH CARE FINANCING ADMIN. 60, 12 (July 2000), <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/TheChartSeries/downloads/35chartbk.pdf>.

43. OFF. OF THE ACTUARY, *supra* note 2, at 65.

44. BUREAU OF LAB. STATS., USDL-17-1429, EMPLOYMENT PROJECTIONS – 2016–26 (2018), <https://www.bls.gov/news.release/pdf/ecopro.pdf>.

C. Assumptions and the Affordable Care Act

Although the nature of Part A makes for greater uncertainty with respect to projections and funding, the Trustees are not completely without some foresight regarding the future financial status of the HI trust fund. Using high cost, low cost, and intermediate cost assumption models, the Trustees estimated that the HI trust fund will eventually be depleted and only able to pay a portion of its obligations. Using the intermediate assumptions model, the Trustees estimated that the HI trust fund will be depleted in 2029 when it will only be able to pay 88% of its obligations to Part A.⁴⁵ Under high cost assumptions, the Trustees estimated that the HI trust fund would be depleted much earlier in 2023.⁴⁶ The intermediate model relied on several assumptions about economic growth and advances in treatments allowing for lower health care costs. Additionally, it relied on the ACA remaining unchanged, which includes 165 provisions that affect Medicare.⁴⁷

Unfortunately, since July 2017, when the Report was released, the 115th Congress, together with the Trump administration, have eliminated or undercut many of the assumptions that the Trustees relied on for their analysis. While it is uncertain how these changes will affect Medicare and more specifically the HI trust fund, it is reasonable to assume that without many of the protections put in place to reduce Part A costs, the reality of the HI trust fund's future may be closer to the high cost assumption model today than the intermediate one.

Perhaps the most glaring change is the cut of payroll taxes (the primary source of funding for the HI trust fund) enacted in the Tax Cuts and Jobs Act of 2017 (TCJA).⁴⁸ Although Congress was fully cognizant of the financial troubles relating to Medicare, its tax plan will not alleviate those troubles but rather exacerbate them by reducing the amount of taxable wages from payrolls, thus decreasing the primary source of revenue for the HI trust fund.⁴⁹ However, due to the complexity of the TCJA, economists are unsure when certain provisions

45. OFF. OF THE ACTUARY, *supra* note 2, at 29.

46. *Id.* at 27.

47. *Id.* at 3.

48. Frank Sammartino et al., *The Effect of the TCJA Individual Income Tax Provisions Across Income Groups and Across the States*, TAX POLICY CENTER (Mar. 28, 2018), http://www.taxpolicycenter.org/sites/default/files/publication/154006/the_effect_of_the_tcja_in_dividual_income_tax_provisions_across_income_groups_and_across_the_states.pdf.

49. See the "Letter of Transmittal" page, of the Trustee's annual report, specifically addressing Speaker of the House, Paul Ryan, and the President of the Senate. OFF. OF THE ACTUARY, *supra* note 2. John Wasik, *How GOP Tax Bill Will Blow Up Medicare*, FORBES (Dec.

will take effect. Therefore, the exact immediate or long-term effects on Medicare are uncertain at this time.⁵⁰ Regardless of when or how the TCJA will begin to affect Medicare, a reasonable inference is that it will harm the current financial status of the HI trust fund.

Additionally, the Bipartisan Budget Act of 2018 (2018 Budget) repealed the Independent Payment Advisory Board (IPAB), which was created by the ACA.⁵¹ The IPAB was tasked with submitting proposals to Congress aimed at extending the solvency of Medicare, slowing Medicare costs, and improving the quality of care for Medicare beneficiaries.⁵² Since 2013, the Chief Actuary at the Center for Medicare and Medicaid Services (CMS) was required to determine the target rate and the projected growth rate in Medicare per-capita spending.⁵³ If in any year the Chief Actuary found that the projected growth rate exceeded the target rate, the Chief would be required to establish a savings target rate for that year, and IPAB in turn would submit a proposal to the President to meet that savings target rate.⁵⁴ Since 2013, however, the Medicare per capita growth rate has never exceeded the target growth rate, so IPAB was never required to submit any such proposal to the President.⁵⁵ But that did not stop IPAB from drawing ire from Republicans who argued that IPAB, which was not subject to judicial, congressional, or administrative review, was too powerful. IPAB could independently recommend certain cuts to Medicare, leading some people to call it a “death panel.”⁵⁶ Although IPAB was never actually triggered, some critics felt it was “better to kill the monster before it ever [saw] the light of day.”⁵⁷

1, 2017, 5:00 AM), <https://www.forbes.com/sites/johnwasik/2017/12/01/how-gop-tax-bill-will-blow-up-medicare/#53a3ab334deb>.

50. John Patrick Pullen, *President Trump Has Signed the GOP Tax Bill. Here's When Cuts Will Start*, FORTUNE (Jan. 2, 2018, 3:18 PM), <http://fortune.com/2017/12/20/gop-tax-bill-cuts-start/>.

51. H.R. Con. Res. 1892, 115th Cong. (2018) (enacted).

52. OFF. OF THE ACTUARY, *supra* note 2, at 178.

53. *Id.*

54. *Id.*

55. *Id.*

56. Glenn Kessler, *Sarah Palin, 'Death Panels' and 'Obamacare'*, WASH. POST (June 27, 2012), https://www.washingtonpost.com/blogs/fact-checker/post/sarah-palin-death-panels-and-obamacare/2012/06/27/gJQAysUP7V_blog.html?utm_term=.c4a9a8b3f753; Phil Roe, *It's Time to Repeal the IPAB*, HOUSE REPUBLICANS (June 23, 2015), <https://www.gop.gov/its-time-to-repeal-the-ipab/>.

57. David Blumenthal & David Squires, *IPAB: Ditching the Dog that Didn't Bark*, COMMONWEALTH FUND (Jan. 8, 2015), <http://www.commonwealthfund.org/publications/blog/2015/jan/ipab-ditching-the-dog>.

Had IPAB remained in place, however, it would likely have been triggered for the first time in 2021, when the Medicare projected growth rate is expected to exceed the target rate for one year.⁵⁸ The growth rate in 2022 and 2023 will slow down behind the target rate, but will again outpace the target rate in 2024, and will remain ahead until the end of the Trustees' projections.⁵⁹ So while conservative budget-hawks would normally celebrate the kind of cuts to government programs that would be recommended by something like IPAB, they are prone to loathe them under a different name: Obamacare. With the "death panel" now dead, it is unclear how the elimination of IPAB, which the Trustees assumed would remain, will affect the short-term status of the HI trust fund or the estimated date of depletion.⁶⁰

Yet another major change that the Trustees did not anticipate when conducting their analysis is the de facto repeal of the ACA's individual mandate in the TCJA signed into law in December of 2017, five months after the release of the Report.⁶¹ The individual mandate was a penalty of \$695 to each person (or 2.5% of one's household income, whichever is more) without qualifying health coverage.⁶² Without enough support in Congress to repeal the ACA and its individual mandate, Congress and the Trump administration instead reduced the penalty to \$0, opting to undermine the ACA instead.⁶³ In 2016, approximately 6.5 million Americans paid the penalty, resulting in approximately \$3 billion collected by the IRS.⁶⁴ The lack of revenue from the penalty will invariably exacerbate the deficits in the federal budget (not including the \$1.5 trillion deficit the TCJA is expected to create on its own).⁶⁵ The exact manner in which the repeal of the individual mandate and the new tax code at large will affect both Medicare trust funds is presently unclear, but it stands to reason that less general revenue will not improve the adequacy of the HI trust fund or the SMI trust fund, but will instead weaken them.

58. OFF. OF THE ACTUARY, *supra* note 2, at 179.

59. *Id.*

60. *Id.* at 5-6.

61. Tax Cuts and Jobs Act, Pub. L. No. 115-97, § 11081, 131 Stat. 2054, 2092 (2017).

62. *Penalty*, HEALTHCARE.GOV, <https://www.healthcare.gov/glossary/penalty/> (last visited Mar. 15, 2019).

63. § 11081.

64. Letter from John Koskinen, IRS Commissioner, to members of Congress (Jan. 9, 2017), <https://www.irs.gov/pub/newsroom/commissionerletteracafilingseason.pdf>.

65. JOINT COMMITTEE ON TAX'N, JCX-66-17, MACROECONOMIC ANALYSIS OF THE "TAX CUT AND JOBS ACT" AS PASSED BY THE HOUSE OF REPRESENTATIVES ON NOVEMBER 16, 2017 2 (2017).

Another assumption the Trustees relied on for the 161 ACA provisions affecting Medicare is cost-sharing reductions (CSRs), an ACA provision that no longer has teeth.⁶⁶ Cost-sharing basically represents the relationship between the insured and the insurer. The insured is obligated to pay a certain portion of the medical claim (in the form of co-pays, deductibles, and premiums) depending on the insurance plan, and the insurer pays the other part, thus the cost is *shared* between the two parties. The ACA implemented CSRs in order to reduce or place annual out-of-pocket limits on insurance companies that capped consumer cost-sharing on certain plans.⁶⁷ Understanding that a burden would be placed on insurance companies by limiting how much they could charge insureds, the ACA provided for subsidies to ease that burden.⁶⁸

Subsidies to health insurance companies were always a controversial issue of the ACA and were often vilified as “Obamacare bailouts.”⁶⁹ But since the Republican-controlled Congress and White House could not gather enough support to repeal the ACA wholesale, the Congress passed a \$1.3 trillion omnibus bill that undercut CSRs, which President Trump signed into law on March 23, 2018.⁷⁰ Of the \$1.3 trillion package, \$88 billion went to the Department of Health and Human Services (the agency charged with paying out the subsidies to insurance companies).⁷¹ But despite lobbying efforts by a coalition of health care providers, such as the American Medical Association and Blue Cross

66. OFF. OF THE ACTUARY, *supra* note 2, at 188.

67. Jane Sung et al., *Health Insurance Cost-Sharing Reductions Are Critical to Ensuring Affordable Health Care for Older Adults*, AARP (Sept. 2017), <https://www.aarp.org/content/dam/aarp/ppi/2017/09/csr-fact-sheet.pdf>.

68. Patient Protection and Affordable Care Act, 42 U.S.C. 18001, §1342 (2010).

69. Glenn Kessler, *President Trump’s Claim of Obamacare ‘Bailouts’ for Insurance Companies*, WASH. POST (Aug. 7, 2017), <https://www.washingtonpost.com/news/fact-checker/wp/2017/08/07/president-trumps-claim-of-obamacare-bailouts-for-insurance-companies/>.

70. John Wagner & Mike DeBonis, *Trump Signs \$1.3 Trillion Spending Bill Despite Veto Threat on Twitter*, WASH. POST (Mar. 23, 2018), https://www.washingtonpost.com/news/post-politics/wp/2018/03/23/trump-threatens-to-veto-omnibus-bill-because-it-does-not-address-daca-recipients/?utm_term=.8a694e873d87; Glenn Kessler, *President Trump’s Claim of Obamacare ‘Bailouts’ for Insurance Companies*, WASH. POST (Aug. 7, 2017), <https://www.washingtonpost.com/news/fact-checker/wp/2017/08/07/president-trumps-claim-of-obamacare-bailouts-for-insurance-companies/>.

71. Susannah Luthi, *Insurance Market Stabilization Out: A Look at Congress’ Spending Omnibus*, MOD. HEALTHCARE (Mar. 21, 2018, 1:00 AM), <http://www.modernhealthcare.com/article/20180321/NEWS/180329973/insurance-market-stabilization-out-a-look-at-congress-spending>.

Blue Shield Association, to include appropriations in the Omnibus bill for CSRs, none of the \$88 billion was appropriated for such.⁷²

Although Medicare Part A costs are not eligible for CSRs, undercutting \$1342 of the ACA by appropriating no money for it does have an effect. Part B and D beneficiaries are eligible for CSRs, and while Parts B and D are funded by the SMI trust fund, over 92% of Part A beneficiaries are also enrolled in Part B.⁷³ This means that although funding for Parts A and B come from different trusts, many Part A beneficiaries will likely be harmed by the lack of appropriations for CSRs because of the rising costs of their Parts B and D co-pays, deductibles, or premiums. The Medicare problem is not only an actuarial one; the problem is that real Americans may soon face lower quality of health care at higher costs if immediate legislative actions are not taken to ameliorate what could be an approaching health care crisis. The Trustees caution that “prompt legislative action” is necessary to achieve financial adequacy of the HI trust fund, and the opinion of the Actuary goes further saying:

Absent an unprecedented change in health care delivery systems and payment mechanisms, the prices paid by Medicare for most health services will fall increasingly short of the cost of providing such services. If this issue is not addressed by subsequent legislation, it is likely that access to, and quality of, Medicare benefits would deteriorate over time for beneficiaries.⁷⁴

Unfortunately, proposals without precedent rarely garner the political support necessary to become law. Equally as unfortunate is the deterioration of quality and access to Medicare benefits that are predicted to follow the inability or unwillingness to make those changes to health care delivery systems and payment mechanisms.

72. *Id.*; Letter from the U.S. Chamber of Commerce and various hospital associations to Congress (Mar. 6, 2018), <https://www.ahip.org/wp-content/uploads/2018/03/Coalition-Market-Stability-Letter-03.06.2018.pdf>.

73. OFF. OF THE ACTUARY, *supra* note 2, at 183.

74. *Id.* at 256.

III. THE PROPOSAL, THE POLITICS, AND THE PLAN

*What battle is this?
The elephant and the ass;
Ever symbionts.*

Any proposal should consider both the policies within it and the politics surrounding it. This paper posits two Medicare cost reduction models that would allow the Medicare to remain solvent into the foreseeable future. Additional options to extend the life of Medicare such as raising taxes and raising the age of eligibility are excluded for the purposes of this paper, though very valuable in a comprehensive and functional Medicare reform package. Bills that propose any cuts to Medicare benefits are met with fierce opposition and are usually dead on arrival. This proposal is designed to overcome the political hurdle of Medicare cuts by expanding benefits first before cuts eventually go into effect. But successful legislation requires deft navigation of both the Congress and constituents. The ACA was sold on a message simultaneously tailored to both politicians and the body politic, and this proposal will adopt some of the same means.

A. The Proposal

The Trustees call for “substantial steps” to address Medicare’s, or rather the HI trust’s, financial problems.⁷⁵ They recommend that “Congress and the executive branch work closely together with a sense of urgency to address the depletion of the HI trust fund and the projected growth in HI (Part A) . . . expenditures.”⁷⁶ They also comment that “[t]he sooner solutions are enacted, the more flexible and gradual they can be.”⁷⁷ Since the HI trust fund’s financial status fails the Trustee’s short-term test by depleting in 2029, the options for flexibility are substantially reduced, requiring substantial steps indeed.⁷⁸ The following proposal to extend Medicare’s solvency posited in this paper is aggressive, but necessary for maintaining the long term viability of the HI trust fund for the nearly eighty-one million Americans expected to

75. *Id.* at 9.

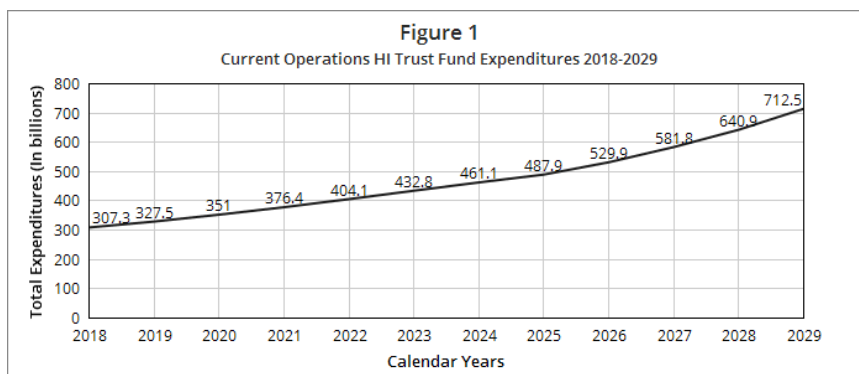
76. *Id.*

77. *Id.*

78. *Id.* at 40.

be enrolled in Medicare Part A by 2030.⁷⁹ By that point, the HI trust fund is estimated to only be able to meet 88% of its liabilities (an \$85 billion deficit) in 2029, or in other words, insolvent.⁸⁰

Note that the proposal below includes no provisions for increases in payroll taxes or increases in age eligibility, both of which are common suggestions to addressing the Medicare problem. Although these provisions would be very beneficial, and are explicitly suggested by the Trustees, this proposal aims to show how actuarial balance can be achieved solely through ABC reductions using either of two unique graduated benefit reduction models described below.⁸¹ Therefore, readers should assess this proposal in vacuum, understanding that additional measures such as raising payroll taxes would only help to ameliorate what may seem to some to be excessively sharp reductions to current or soon-to-be beneficiaries. In other words, this proposal is intended to be an honest, starting bargaining position to be appended to a more comprehensive and robust Medicare reform bill that can receive bipartisan support to the extent necessary to pass both chambers of Congress and eventually be signed into law.



79. *Id.* at 41, 183.

80. *Id.* at 41, 183. \$85.5 billion deficit estimated by using assets at the beginning of 2029 and total HI trust fund expenditures for that year and solving for the difference between the total expenditures and 88% of those expenditures.

81. *Id.* at 66, n.38.

As discussed previously, the HI trust fund is estimated to be depleted in 2029 using an intermediate (as opposed to high cost or low cost) assumption model.⁸² The Report gives valuable information including the estimated total incomes and total expenditures for the HI trust fund through the year 2026 along with enrollment estimates.⁸³ However, the values for income, expenditures, and enrollment for the last three years leading to depletion (2027, 2028, and 2029) are omitted from the Report.⁸⁴ Identifying or solving for the values for these years is crucial to creating a viable short-term solvency proposal, since the proposal should gradually reduce expenses so that the trust can meet 100% of its obligations in 2029 and into the future. Fortunately, accurate estimates for these can be extrapolated using an algebraic difference table, and the following proposal will use these estimates.

It is import here to briefly explain the methodology used to arrive at the estimated values in order to ensure accuracy in the extrapolations and the integrity of the proposal. For example, *Table V.B4. – Medicare Enrollment* of the Report gives historical values for Part A enrollment from 1970 to 2016.⁸⁵ It goes on to provide intermediate estimates for 2017 to 2026, where upon the enrollment values for 2027, 2028, and 2029 are omitted, but values are again provided for 2030 and for every fifth year thereafter (i.e. 2035, 2040, 2045, and so on) until 2091.⁸⁶ Therefore, using an algebraic difference table, the increase in enrollment for each subsequent year after 2026 can be solved for 1.995%. The increase is multiplied by the provided enrollment estimate in 2026 and the product is again multiplied by the increase (1.995%). When repeated for 2027 through 2030, the extrapolated values for enrollment for 2027 to 2030 are (in thousands) 76,214, 77,734, 79,285, and 80,866, respectively. Since the Report itself provides the value of enrollment for 2030, which is indeed 80,866, the calculations are reliable.⁸⁷ The same methodology was used to extrapolate ABC, and total HI trust fund expenditures for years 2027 to 2029. Total HI trust fund

82. OFF. OF THE ACTUARY, *supra* note 2, at 10.

83. *Id.* at 54, 57, 188.

84. *Id.* at 54.

85. *Id.* at 183.

86. *Id.*

87. *Id.*

expenditures is simply the number of beneficiaries or enrollees multiplied by the ABC. Therefore, total HI trust fund expenditures during 2019 to 2029 absent any legislative changes can be accurately estimated at \$5.31 trillion.

Table I

Current Operations of the HI Trust Fund during Calendar Years 2019-2029

Calendar Year	Enrollment ¹ (In thousands)	Average Incurred per Beneficiary Cost ^{2**}	Total Expenditures (In billions)
2019	61,839	\$5,326	\$327.5
2020	63,720	5,543	351.0
2021	65,595	5,775	376.4
2022	67,489	6,025	404.1
2023	69,338	6,279	432.8
2024	71,134	6,520	461.1
2025	72,955	6,735	487.9
2026	74,723	7,135	529.9
2027	76,214*	7,634*	581.8*
2028	77,734*	8,245*	640.9*
2029	79,285*	8,987*	712.5*

Sum: \$5.3059 trillion**

¹Enrollment data for years 2027-2029 extrapolated from Table V.B4 – Medicare Enrollment, 2017 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, at 188.

² Figures determined by base figures extrapolated from Table V.D1. – HI and SMI Average Incurred per Beneficiary Costs, *Id.* at 197.

* Figure extrapolated

** Totals do not necessarily equal the sums of rounded components

Note that extrapolating HI trust fund revenue for 2027 to 2029 is not necessary for this proposal, because by recognizing that the HI trust fund balance at the end of 2029 is \$-85.8 billion, the exact incomes and trust fund balances at the end of 2027 and 2028 matter little. It is enough to assume that the end of year balances for 2027 and 2028 are gradually reduced at an unspecified rate, but remain positive (since the HI trust fund can cover 100% of the costs of Part A as late as 2028) before the HI trust fund balance first becomes negative in 2029 and is only able to pay 88% of its obligations.⁸⁸

Any viable proposal should attempt to meet 100% of HI's Part A obligations in 2029 by producing a positive end-of-year trust fund balance and by steadily increasing the trust's end of year balance each subsequent year in order to maintain long-term adequacy, stability, and longevity. According to the intermediate estimates, at the time of this writing, eleven years remain until insolvency. Therefore, the proposal below spans eleven years. The flexibility that lawmakers have to soften cuts to Medicare is reduced every year that no action is taken.

88. OFF. OF THE ACTUARY, *supra* note 2, at 29.

And since \$5.31 trillion within eleven years is all the flexibility that is available, the substantial steps necessary to meet the goal may be, by necessity, less gradual than what is desirable or comfortable. However, those steps should be as gradual as possible so as to not place too heavy a burden on current and soon-to-be Part A beneficiaries.

Table V.D1. – *HI trust fund and SMI trust fund Average Incurred per Beneficiary Costs* in the Report provides estimates for HI trust fund (or Part A) ABC from 2017 to 2026.⁸⁹ Only the years 2019 to 2029 are relevant to this proposal. As discussed above, the Report does not provide estimates for 2027, 2028, and 2029, and an algebraic difference table estimated that, if left unchanged, the ABC for those years will be \$7634, \$8245, and \$8987, respectively. Multiplying these values by projected enrollments for the corresponding years results in massive deficits, with HI trust fund assets depleted in 2029 and only able to pay 88% of its obligations to Part A.⁹⁰ This proposal therefore recommends gradual legislative limits on ABC for the short-term period.

The current pay-as-you-go system requires that payroll taxes from today's workers provide the benefits for today's beneficiaries.⁹¹ The Trustees note that the HI trust fund actuarial balance could be reached by reducing Part A benefits by 14% each year if the reductions are implemented immediately.⁹² However, an immediate reduction in Medicare benefits would not be well received by the Medicare community to put it mildly and would also have no chance of passing Congress. Therefore, this eleven-year proposal provides two graduated models in which ABC is immediately expanded in 2019 and gradually reduced each year thereafter until 2029. Both models would achieve actuarial balance, but they graduate at different rates. For example, Model A expands ABC to a greater extent than Model B, but this means that in order to achieve actuarial balance, the negative slope in ABC is also greater with Model A in order to make up for the larger initial expansion. Model A would appeal more to the older Medicare beneficiary population because they would enjoy greater benefits immediately (accounting for the fact that generally, the older one is, the less time one has left to live); meanwhile, Model B would appeal more to the younger Medicare beneficiary population, or those who are within eleven years of reaching the age of eligibility.

89. *Id.* at 197.

90. *Id.* at 29.

91. *Id.* at 214.

92. *Id.* at 66, n.38.

1. Model A

The Report provides that in 2019, ABC is \$5326 (the base).⁹³ Model A proposes that ABC be raised by mandate to \$8072 for 2019. This value was reached by solving for the difference between \$8987 (the extrapolated ABC for 2029 if left unchanged) and the base, which is \$3661, and multiplying that difference by 75%, producing \$2746 (the bump). The sum of the base and the bump is \$8072, which is the mandated ABC for 2019. Seventy-five percent is the optimal multiplier because it allows for the greatest expansion of benefits while still achieving actuarial balance when following the prescribed graduation of Model A. Mandated ABC limits for subsequent years would allot 9/10 of the \$2746 bump in addition to the base in 2020, then 8/10 in 2021, 7/10 in 2021, and so on (i.e. \$7797 in 2020 and \$7523 in 2021) until ABC would bottom out in 2029, receiving the base amount only. This model would result in \$5.1725 trillion in total HI trust fund expenditures, saving \$133.4 billion over the short-term period compared to operations if left unchanged.⁹⁴ The savings would provide for a modest end-of-year surplus of \$47.9 billion in 2029 as opposed to a deficit.⁹⁵

Table II

Model A - Operations of the HI Trust Fund during Calendar Years 2019-2029

Calendar Year	Enrollment ¹ (In thousands)	Average Incurred per Beneficiary Cost ^{2**}	Total Expenditures (In billions)
2019	61,839	\$8072	\$499.2
2020	63,720	7,797	496.9
2021	65,595	7,523	493.5
2022	67,489	7,248	489.2
2023	69,338	7,974	483.5
2024	71,134	6,699	476.5
2025	72,955	6,424	468.7
2026	74,723	6,150	469.5
2027	76,214*	5,875	447.8
2028	77,734*	5,601	435.4
2029	79,285*	5,326	422.3

Sum: \$5.1725 trillion**

¹Enrollment data for years 2027-2029 extrapolated from Table V.B4 – Medicare Enrollment, 2017 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, at 188.

² Figures determined by base figures extrapolated from Table V.D1. – HI and SMI Average Incurred per Beneficiary Costs, *Id.* at 197.

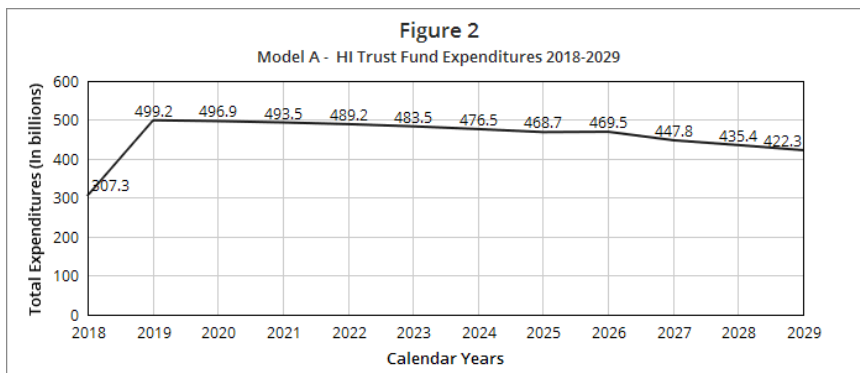
* Figure extrapolated

** Totals do not necessarily equal the sums of rounded components

93. *Id.* at 197.

94. \$133.4 billion savings calculated by subtracting total expenditures in Model A from total expenditures as presently estimated.

95. \$47.9 billion end-of-year surplus calculated by adding \$133.4 billion to the estimated 2029 deficit (-\$85.5 billion).



Under Model A, beneficiaries would receive a net increase of \$2746 of benefits in 2019 and \$2471 in 2020, gradually reducing ABC until 2025 when beneficiaries would begin to see a net decrease in benefits (\$-311) when compared to ABC levels absent any changes. The net decreases or difference in benefits when compared to current operations would grow larger each subsequent year. The benefit to current beneficiaries is that they would receive a net increase of \$8845 between 2019 and 2024, before seeing reductions in 2025 compared to current operations. The downside is that the latter part of the short-term period for Model A would see sharp reductions to make up for the large expansion during the former years. For example, beneficiaries reaching the age of eligibility in 2029 would see an ABC reduction of \$33,661 were Medicare left unchanged. Remember, however, that if left unchanged, only 88% of payments can be made, so it is probable that beneficiaries would not see the full estimated \$8987 in 2029 anyway.⁹⁶

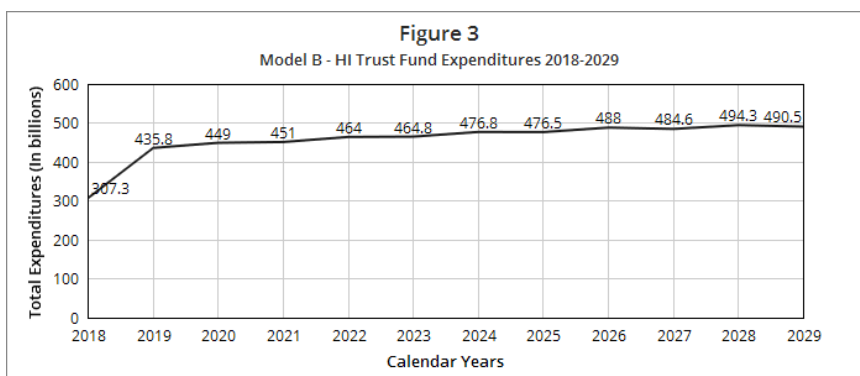
2. Model B

Model B is designed to reduce the rate of the negative slope of the ABC when compared to Model A by not expanding benefits to the extent of model A in 2019. Model B proposes that ABC be raised by mandate to \$7047 in 2019. This value was reached by multiplying the

96. OFF. OF THE ACTUARY, *supra* note 2, at 29.

base by 47% instead of 75%. Forty-seven percent is the optimal multiplier in this case because it too allows for the greatest expansion of benefits while still achieving actuarial balance when following the prescribed graduation of Model B. Under this model, current beneficiaries would receive a lesser bump of \$1721 in addition to the base, totaling \$7047 in 2019. The difference in graduation between Models A and B is that instead of reducing the bump by 1/10 ever year, the 1/10 reduction would occur every other year. For example, in 2019 and 2020 beneficiaries would receive the full bump, totaling \$7157. Thereafter, beneficiaries in both 2021 and 2022 would receive 9/10 of the bump, and beneficiaries in both 2023 and 2024 would receive 8/10 of the bump, and so on until beneficiaries would receive 5/10 of the bump in 2029.

Model B would cost \$5.1753 trillion over the short-term period, saving \$130.6 billion, leaving a surplus of \$45.1 billion in the HI trust fund after rounding.⁹⁷ As the figures demonstrate, Model B may be less appealing to the older Medicare population because the initial expansion is diluted. However, it is a softer burden on the younger population who would not see so rapid a decline in ABC. Current beneficiaries would see a net increase of \$5782 in the first six years when compared to current operations, as opposed to \$8845 net increase in model A during the years 2019 to 2024, after which in 2025 beneficiaries would actually begin to see reduction to ABC were the law left unchanged.



97. \$130.6 billion savings calculated by subtracting total expenditures in Model B from total expenditures as presently estimated. \$45.1 billion end of year surplus calculated by adding \$130.6 billion to the estimated 2029 deficit (-\$85.5 billion).

Table III**Model B - Operations of the HI Trust Fund during Calendar Years 2019-2029**

Calendar Year	Enrollment ¹ (In thousands)	Average Incurred per Beneficiary Cost ^{2**}	Total Expenditures (In billions)
2019	61,839	\$7,047	\$435.8
2020	63,720	7,047	449.0
2021	65,595	6,875	451.0
2022	67,489	6,875	464.0
2023	69,338	6,703	464.8
2024	71,134	6,703	476.8
2025	72,955	6,531	476.5
2026	74,723	6,531	488.0
2027	76,214*	6,359	484.6
2028	77,734*	6,359	494.3
2029	79,285*	6,187	490.5
Sum:			\$5.1753 trillion**

¹Enrollment data for years 2027-2029 extrapolated from Table V.B4 – Medicare Enrollment, 2017 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, at 188.

² Figures determined by base figures extrapolated from Table V.D1. – HI and SMI Average Incurred per Beneficiary Costs, *id.* at 197.

* Figure extrapolated

**Totals do not necessarily equal the sums of rounded components

Although both models achieve actuarial balance, each raise different political incentives or disincentives depending on what would appeal more to voters: a more aggressive model that more generously expands benefits immediately with greater reductions in the latter part of the short-term period, or a moderate model with a more modest initial expansion of benefits allowing for a softer reduction in benefits over the same period. It would be up to Congress to decide which model would be more favorable to their constituents.

B. The Politics

Perhaps the biggest obstacle to entitlement, or more specifically to Medicare reform, is the argument from political opponents who claim that any proposals to reduce benefits for Medicare beneficiaries is cruel, since current beneficiaries have paid into the program by participating in the labor force for decades. It would be heartless to deprive senior Americans of the health care coverage they so desperately require and at a time in their lives when they are most vulnerable. The power of this argument must not be underestimated. It commands re-

spect, especially since Americans over the age of fifty-five have historically been the most active voting population.⁹⁸ So anyone who proposes to harm them by reducing their benefits in any form or fashion will be answered with a swift wallop from a cane, figuratively or otherwise. Politicians know this and it is likely a contributing factor to why the Medicare problem has been allowed to reach the point of potential jeopardy. The simplest explanation is that candidates who propose changes to Medicare do not generally win elections.

Cuts to government programs, whether they be to Medicaid, Medicare, Social Security, or the Supplemental Nutritional Assistance Program (or food stamps) almost universally come from the right, or the Republican aisle of Congress. Republicans have historically carried the flag of fiscal conservatism, at least theatrically if not in practice. Efforts by Republicans to reform entitlements have existed since their enactments. Entitlement reform is commonly understood to be something of a white whale for House Speaker Paul Ryan (R-WI), who has worked to pass such reform during his two decades in Congress to no avail.⁹⁹ A progressive PAC went so far as to make a video depicting Ryan wheeling an old woman off a cliff with captions that read, “Is America Beautiful without Medicare?”¹⁰⁰ While the advertisement is hyperbolic, it illustrates the point that largely Democrats and not many Americans have an appetite for Medicare reform.

Reformation proposals have lived and died even with safeguards in place to protect current and soon-to-be beneficiaries by grandfathering them in and shielding them from any potential changes. For example, Senator Marco Rubio (R-FL) in defense of such a proposal said, “my mother depends on Medicare and Social Security. I will never support anything that would hurt my mother or retirees like her.”¹⁰¹ Still, these safeguards are not enough because Medicare reform is too easily wielded as a club to beat the candidate who proposes it, even with safeguards in place. Even for those candidates who may genuinely believe that something must be done, the opportunity to attack their opponents as heartless or unfeeling in return for a bump in the polls

98. *Voting in America: A Look at the 2016 Presidential Election*, *supra* note 10.

99. *CNBC Transcript: House Speaker Paul Ryan Speaks with “Squawk Box” Today*, CNBC (Apr. 17, 2018, 10:08 AM), <https://www.cnbc.com/2018/04/17/cnbc-transcript-house-speaker-paul-ryan-speaks-with-squawk-box-today.html>.

100. The Agenda Project Action Fund, *Granny Off the Cliff*, YOUTUBE (May 17, 2011), <https://www.youtube.com/watch?v=OGnE83A1Z4U>.

101. *Rubio Proposes Retirement Security Reforms at National Press Club* (C-SPAN television broadcast May 13, 2014).

or perhaps even securing a win is too tempting. Like many of the most difficult problems in America, many politicians have found that the best policy involving a substantial problem is simply to ignore it.

This is where the proposal posited in this paper diverges from previous proposals. Since benefits initially increase as opposed to decrease, the powerful argument against reducing benefits suddenly loses several terawatts. The proposal naturally turns the argument (and the arguer) on its head since the proposal mandates that benefits be expanded immediately for current beneficiaries who are struggling now, while giving prospective beneficiaries an opportunity to plan for the future. After all, the average retired couple will pay approximately \$280,000 in medical bills, contributing to medical related bankruptcy cases for retirees filed each year.¹⁰² In that regard, it would seem more heartless still to deny immediate expansion of benefits for senior Americans who need them now more than ever.

Remember that this proposal is submitted in a vacuum where increases in payroll tax and raising the age of eligibility do not exist. In reality, a comprehensive bill drafted for passing would include things of that nature, ultimately reducing the rate of benefit reductions and offer bipartisan compromises in order to earn the necessary votes to move on to the president's desk. Here, only reductions and those to Part A are being proposed.

C. The Plan

A proposal without a plan has no value. Political opponents will always oppose, but for real implementation, a proposal must persuade the public that it is good. With additional provisions such as raising payroll taxes, Medicare reform done benignly could plausibly gather enough bipartisan support to become law. But whether the public could get behind it is another matter.

Polls and surveys show that not all voters are equal, or rather not all voters treat the same issues equally. In 2016, Pew Research conducted a survey that showed issue importance according to age groups by asking registered voters whether certain issues were "very important."¹⁰³ The survey found that among the oldest voters above the

102. *How to Plan for Rising Health Care Costs*, FIDELITY (Apr. 18, 2018), <https://www.fidelity.com/viewpoints/personal-finance/plan-for-rising-health-care-costs>.

103. *2016 Issue Importance by Age Groups*, PEW RES. CTR. (July 7, 2016), http://www.people-press.org/2016/07/07/4-top-voting-issues-in-2016-election/4_3-4/.

age of sixty-five, 79% and 78% answered that healthcare and social security were very important issues, respectively.¹⁰⁴ In contrast, of the eighteen to twenty-nine age group, only 57% thought that Social Security is an important issue.¹⁰⁵ While the survey did not distinguish Medicare from health care generally, Medicare tends to be more closely associated with Social Security since both are often lumped together as entitlement programs. The youngest group of voters identified the economy, treatment of racial and ethnic minorities, and gun policy as the most important issues.¹⁰⁶

These data can be interpreted to mean that current or soon-to-be beneficiaries have a greater interest in Medicare and its associated benefits, especially if those benefits will increase in the short-term. Moreover, the 58% eighteen to forty-nine year old voters who answered that Social Security is a very important issue would be less likely to oppose a proposal that will not personally affect them for a few decades.¹⁰⁷ In other words, with the right message, lawmakers may be able to excite the voters who stand to benefit the most without alienating those who would not be favored by future reductions in benefits.

The passing of ACA showed how important messaging is when gathering support for a new proposal. Even misleading messages such as, “If you like your doctor, you can keep your doctor” earned President Obama four Pinocchios by the Washington Post.¹⁰⁸ This may be in part due to the idea that, as Jonathan Gruber—considered to be one of the “chief architects” of the ACA—commented, the “stupidity” of the American voter and the “lack of transparency” of the law were critical to its passing.¹⁰⁹ While Gruber’s comments elicited outrage from Republicans, and the Obama administration and the Democratic leadership distanced themselves from Gruber, there is at least some truth in his words.¹¹⁰ Many areas of law are complex and convoluted, and

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. Glenn Kessler, *Obama’s Pledge That ‘No One Will Take Away’ Your Health Plan*, WASH. POST (Oct. 30, 2013), https://www.washingtonpost.com/news/fact-checker/wp/2013/10/30/obamas-pledge-that-no-one-will-take-away-your-health-plan/?utm_term=.008de85faa4e.

109. *Annual Health Economics Conference 2013 Agenda*, PENN LDI (Oct. 17, 2013), <https://ldi.upenn.edu/ahec2013/agenda>; Marc Thiessen, *Thanks to Jonathan Gruber for Revealing Obamacare Deception* WASH POST (Nov. 17, 2014), https://www.washingtonpost.com/opinions/marc-thiessen-thanks-to-jonathan-gruber-for-revealing-obamacare-deception/2014/11/17/356514b2-6e72-11e4-893f-86bd390a3340_story.html?utm_term=.d1cd2f6d6946.

110. Thiessen, *supra* note 108.

health care is one of the best examples. Although lawmaking is often opaque, lawmakers can learn from the passing of the ACA that certain well intended proposals (especially initially unpopular ones) to improve the general welfare can gain support by utilizing various tools such as opacity, persuasion, and even manipulation in some cases to bring about necessary changes since it is lawmakers, after all, who are charged with protecting and improving the general welfare, without regard to the political repercussions that may follow.

IV. CONCLUSION

The Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds released an annual Report in 2017 estimating that the HI trust fund, which funds Part A is estimated to be depleted in 2029. This is because the labor force, whose payroll taxes fund most of HI trust fund, will be insufficient to support the anticipated growth rate of enrollees to Part A as more Boomers reach the age of Medicare eligibility. The Trustees recommend legislative changes to preserve the financial integrity of the HI trust fund.

The proposal of this paper illustrates how the HI trust fund can reach actuarial balance in 2029 and onward solely through benefit reductions by implementing either of two graduated benefit reduction models that mandate immediate benefit expansions in 2019, with the most gradual reductions possible in order to achieve actuarial balance. The purpose of the immediate expansion is a preemptive defense to political opponents who would argue that benefit reductions are hurtful to beneficiaries by countering that this proposal immediately expands Part A benefits as opposed to shrinking them.

Although additional measures such as increases in payroll taxes or additional transfers from general revenue could and should be included in a comprehensive Medicare reform bill to maintain the long-term viability of the HI trust fund, those measures would only serve to ameliorate the affect that the proposed graduated reductions would have on current and soon-to-be beneficiaries. Providing for those bipartisan measures in addition to this proposal may be a viable path for a Medicare reform bill to earn the support of the public and the necessary congressional support for bicameralism and presentment, thereby protecting senior Americans into the future dependent on Medicare Part A.

Oscar Castro