BUDGET BULLETIN
A WEEKLY BULLETIN PRODUCED WHEN THE SENATE IS IN SESSION.
COMMITTEE ON THE BUDGET Republican Staff
Judd Gregg, Ranking Member
202/224-0642 http://budget.senate.gov/republican

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# INFORMED BUDGETEER:

## THE ABC&D's OF THE TRIGGER

- On February 15, Department of Health and Human Services Secretary Michael Leavitt transmitted, on behalf of the Administration, legislative language to Congress in response to a cost-containment provision in the Medicare Modernization Act (MMA) of 2003 (P.L. 108-173); the provision is often referred to as the "45% Trigger."

- The legislation is supposed to eliminate the "excess general revenue funding" in Medicare. (The "general fund" of the Treasury simply means most of the revenues collected by the federal government that are not dedicated by law to a specific purpose, such as Social Security or Medicare.) What is the 45% Trigger, and how did we get here?

**Background**

- Medicare is partially financed from dedicated income sources that largely consist of Medicare payroll taxes on everyone who is working and insurance premiums paid by seniors who receive Medicare health insurance benefits. The Medicare payroll taxes are used to pay for hospital and other institutional care (Part A), and the premiums are used to partially finance physician and outpatient services and coverage for prescription drugs (Parts B and D). While it is possible for Part A of Medicare to go bankrupt, Parts B and D enjoy permanent and limitless draws on general revenues in the Treasury to cover whatever the difference is between premium collections and costs.

- While the MMA most notably created the Medicare prescription drug benefit (aka: Part D), it also included a provision creating a new measure to evaluate Medicare's financial health – the 45% Trigger. The trigger provision provides a broader measure of the financial health of the entire Medicare program than the Part A solvency measure used previously by the Trustees.

- Specifically, section 801 of the MMA requires that the annual Medicare Trustees Report include an expanded analysis of Medicare expenditures and revenues. The Trustees are required to project in their annual report whether resources drawn from the general fund of the Treasury will account for more than 45% of total annual Medicare outlays (for all "Parts") in any one year within the next seven years.

- The Trustees made this determination in two consecutive years (2006 and 2007), triggering the first Medicare Funding Warning in April 2007. Section 802 of the MMA specifically requires that once a Medicare Funding Warning has been triggered, the President is required to submit to Congress "proposed legislation to respond to such warning" within 15 days of his next budget submission.

- Therefore, after the Trustees issued a second consecutive Medicare Funding Warning in April 2007, the President was required to submit to Congress a proposal within 15 days after the FY 2009 Budget was submitted on February 4, 2008. The President complied with this requirement by transmitting a proposal on February 15 (see letter, summary, & legislation).

**The 45% Threshold**

- Some in Congress immediately ridiculed the President's submission, accusing the Administration of "trump[ing]up a phony crisis in Medicare" and using "little more than a scare tactic to promote cuts." This is a puzzling claim considering that there was extensive internal debate within the Administration about whether the Executive Branch should even submit anything in response to a requirement in an actual law (MMA). The President's signing statement on the MMA foreshadowed that it would not necessarily be automatic that the Executive Branch would respond to a funding warning issued under section 802 of the MMA.

- In contrast to the critics of the Medicare Funding Warning, other members and experts – such as the Chairman and Ranking Member of the Senate Budget Committee, the current Director of the Congressional Budget Office (CBO), and the former Comptroller General of the Government Accountability Office – have been warning for several years about the crisis that Medicare already faces. They argue the time to act is now – the sooner the better – so that smaller remedial measures have time to work, rather than waiting until the last second when more drastic measures would be required.

- In addition, earlier this week, three former CBO directors and other budget scholars from institutions as diverse as Brookings, the Heritage Foundation, and the Urban Institute all joined in a project titled "Taking Back Our Fiscal Future" and called for a trigger mechanism to apply to all the major entitlement programs – Social Security, Medicare, and Medicaid.

- Other observers, while seeming to agree that the growth in Medicare costs is unsustainable, seem more distracted by the trigger number itself – 45%. For example, the House Majority leader asserted that the "Medicare trigger is ill-suited to. . .a process" of addressing Medicare's sustainability, without explaining why it is "ill-suited."

- And a former Medicare administrator asked and answered in a self-contradiction: "Is 45% a meaningful or critical trigger? No. But it indicates increasing reliance on general revenue for a program that at one point had a large part of its expenditures tied to an earmarked fund."

- Wait a minute! If the 45% trigger "indicates increasing reliance on general revenue for a program that at one point had a large part of its expenditures tied to an earmarked fund," then doesn't that make the 45% threshold meaningful?

**Table 1:**
**Historical Data on Medicare Spending and Sources of Funding ($ billions by calendar year)**

| | Total Medicare outlays | Dedicated revenue | General revenue funding | % of Total Spending Paid from General Revenues |
|---|---|---|---|---|
| 1970 | 7 | 6 | 1 | 19% |
| 1975 | 16 | 14 | 3 | 17% |
| 1980 | 37 | 27 | 10 | 26% |
| 1985 | 72 | 54 | 19 | 26% |
| 1990 | 111 | 84 | 27 | 24% |
| 1995 | 184 | 123 | 61 | 33% |
| 1996 | 200 | 135 | 65 | 33% |
| 1997 | 214 | 139 | 74 | 35% |
| 1998 | 213 | 152 | 61 | 29% |
| 1999 | 213 | 160 | 53 | 25% |
| 2000 | 222 | 176 | 46 | 21% |
| 2001 | 245 | 184 | 61 | 25% |
| 2002 | 266 | 188 | 78 | 29% |
| 2003 | 281 | 187 | 94 | 33% |
| 2004 | 309 | 199 | 110 | 36% |
| 2005 | 336 | 221 | 116 | 34% |
| 2006 | 408 | 247 | 162 | 40% |
| 2007 | 438 | 264 | 174 | 40% |

Source: CMS, Office of the Actuary, based on 2007 Trustees Report

- Consider this brief summary of how people used to think about Medicare's viability. Medicare has three main parts. Part A is the Hospital Trust Fund, where beneficiaries' hospital expenses are supposed to be covered entirely by payroll taxes. Part B, covering physician costs, is not really a trust fund since seniors' Part B Medicare premiums are, by design, supposed to cover only 25% of the costs of their doctor visits, with the rest of the cost paid by the general fund of the Treasury.

- Until 2003, most people (and the Medicare actuaries) used to think about the sustainability or "solvency" of Medicare by looking at only the solvency of the Part A trust fund. When the Part A trust fund began to look insolvent, Medicare payroll taxes would be increased (like in 1993) or Congress and the President would redefine what expenses would be covered by Part A (e.g., by shifting some costs from Part A into Part B, and, presto-chango, making Part A look solvent again, as was done in 1997).

- With the enactment of the prescription drug benefit in Part D in 2003, Medicare's pressure on the general fund had to increase since the MMA planned to cover only a relatively small portion of Part D's total costs through beneficiary premiums (Part D premiums cover less than 10% of the cost of the prescription drug benefit). Expecting such increased pressure on the general fund, the authors of the MMA created the 45% trigger to force the Medicare actuaries and others to stop looking at only Part A for evaluating the sustainability of federal Medicare commitments and move to a more holistic, informative measure.

- And in fact, Medicare's reliance on the general fund has actually increased. Table 1 shows that the amount that Medicare has needed to draw from general revenues to pay for all Medicare benefits has been increasing from less than 20% since the 1970s. By 1997, revenues from the general fund of the Treasury were needed to pay for more than one-third of total Medicare outlays.

- Then, the 1997 Balanced Budget Act shifted the responsibility for certain health care costs from Part A to Part B (to make Part A appear more "solvent"). Because Part A is supposed to be entirely paid for by dedicated revenue and because Part B uses general fund revenues to pay for 75% of its costs, the shift of some costs from Part A to Part B seems like it should have made the general fund contribution increase.

- But instead, the general fund contribution temporarily declined after 1997 because of the following combination: Part B premiums increased while total Medicare outlays essentially remained constant in nominal dollars for three years (i.e., declined in real terms because of a slowdown in health care costs in the economy and improved efforts to reduce fraud and abuse in Medicare payments). As a result, dedicated Medicare revenues increased by 27% from 1997 to 2000 (thereby reducing the need for general fund revenues), while total Medicare outlays increased in nominal terms by less than 4% over the same period.

- Since 2000, the general fund contribution once again has grown considerably, first because health care costs took off again, and then especially since 2005 with the implementation of the Part D benefit starting in 2006 (because Part D premiums are designed to cover only a small fraction of the total cost of Medicare prescription drugs). By 2006, the general fund had to kick in for 40% of all Medicare spending.

- You don't have to be an eagle-eyed budgeteer to note that all the folks complaining about the "arbitrariness" of the 45% threshold have not bothered to come up with a "better" one or tried to motivate what a better indicator would be. How about this rationale for the 45% trigger, in part suggested by the former Medicare administrator? Medicare was once "largely" (80%) paid for by dedicated funding sources. In the near future, Medicare is on a path where more than half of its costs are NOT covered by dedicated funding sources (see Table 2 below). Is this a good thing? Discuss.

- Seriously, the 45% threshold is the first "round number" threshold below 50% that could serve as a warning that you are getting close to more than half. Why do we need a better rationale than that, unless there is a consensus that it is OK for the general fund of the Treasury to be an open wallet to Medicare, covering more than half of Medicare's costs with little to limit Treasury's future exposure?

- Regardless of whether there might be a marginally more "meaningful," more "critical," or less "ill-suited" indicator, the 45% trigger is a requirement of the law, and so the Medicare Trustees produced projections that are required by law (see Table 2). Note that for 2013 (and in each year thereafter), the Trustees' 2007 report projected that the 45% threshold will be breached.

**Table 2:**
**Medicare Trustees' projections of Medicare spending, sources of funding, and general fund contribution**
**($ billions by calendar year)**

| | Total Medicare outlays | Dedicated revenue | General revenue funding | % of Total Spending Paid from General Revenues |
|---|---|---|---|---|
| 2008 | 477 | 279 | 197 | 41.4% |
| 2009 | 513 | 298 | 216 | 42.0% |
| 2010 | 552 | 316 | 237 | 42.9% |
| 2011 | 593 | 336 | 258 | 43.4% |
| 2012 | 640 | 356 | 283 | 44.3% |
| 2013 | 688 | 377 | 311 | **45.2%** |
| 2014 | 741 | 399 | 343 | 46.2% |
| 2015 | 798 | 422 | 377 | 47.2% |
| 2016 | 863 | 446 | 417 | 48.3% |
| 2017 | 930 | 471 | 460 | 49.4% |
| 2018 | 1007 | 498 | 509 | 50.5% |

Source: CMS, Office of the Actuary, based on 2007 Trustees Report

**BE SURE TO READ ON TO PART 2 OF THIS BULLETIN IN ISSUE 4B**

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# INFORMED BUDGETEER:

## PART 2 OF: THE ABC&D's OF THE TRIGGER

### The President's Response

- The proposed legislation transmitted on February 15 includes three main proposals (details in box below).

**The Administration's Response to the Trigger**

**Title I – Health information technology and transparency.** Title I would require HHS to begin implementing programs to improve health care outcomes and give consumers more information to evaluate the cost and quality of health care, including incentives to encourage providers to 1) utilize electronic medical records; 2) provide pricing information that allows consumers to compare costs; and 3) provide better care and ways for consumers to compare the quality of care they receive.

**Title II – Medical liability reform.** This title would allow for unlimited patient recovery of economic damages (such as doctor and hospital bills, lost wages, and other tangible losses)and would limit non-economic damages, such as pain and suffering, to $250,000, regardless of the number of health care providers involved. Title II also would raise the burden of proof for the award of punitive damages, requiring the plaintiff to show "clear and convincing evidence" of either malicious intent to injure or deliberate failure to avoid unnecessary injury. In addition, total punitive damages would be limited to the greater of $250,000 or twice the amount of economic damages awarded.

**Title III - Medicare Part D premium subsidy.** Title III would require seniors earning more than $82,000 (singles) and $164,000 (couples) to pay a higher premium for their Medicare prescription drug coverage. Currently, all participants pay the same premium, regardless of income. This proposal would make Part D similar to the current treatment of the Part B premiums enacted in the Medicare Modernization Act, except that the income threshold for Part D means testing would not be indexed for inflation.

- For the President's proposal, the actuaries at the Centers for Medicare and Medicaid Services (CMS) estimated savings only for the proposals in Title III, which would require higher-income individuals to pay higher Part D premiums. They estimate that over the 2009-2013 period, this policy would result in a net increase in Part D premiums of $2.7 billion and would reduce Part D spending by $0.5 billion (because some seniors would not want to pay the higher premium and would drop out of the prescription drug program, thereby reducing Part D outlays).

- According to the actuaries, the combination of these effects would reduce the general revenue component of total Medicare funding from 45.1% in 2013 to 44.9% – just under the threshold. However, even if the President's proposal was enacted, the general fund contribution would still exceed 45% in 2014 (and would continue to grow to more than 50% by 2018).

- But Congress relies on the Congressional Budget Office (CBO), not CMS, to estimate savings or costs associated with legislative proposals. CBO has estimated somewhat larger savings because it says that the medical liability provisions in Title II also would result in savings, and not just in Medicare, but also in Medicaid and the Federal Employees Health Benefit program (see Table 3). Like CMS, CBO also estimates that the President's proposal would just barely prevent the general fund contribution to Medicare from exceeding 45% in 2013 (but it would still continue to grow from 46% in 2014 to 50% in 2018 according to CBO.

**Table 3:**
**Comparison of CMS vs. CBO 5-Year Estimates of President's Trigger Legislation (S. 2662/H.R. 5480)**

($ billions, 2009-2013)

| | CMS | CBO |
|---|---|---|
| **Budgetary Effect on Total Federal Govt.** | | |
| Title | | |
| I-Info Technology | -- | -- |
| II - Med Liability Reform | -- | -3.1 |
| III - Part D Premiums | -3.2 | -2.6 |
| Total Budgetary Effect | -3.2 | -5.7 |
| **Budgetary Effect on Medicare Only** | | |
| Title | | |
| I-Info Technology | -- | -- |
| II - Med Liability Reform | -- | -2.1 |
| III - Part D Premiums | -3.2 | -2.6 |
| Total Medicare Effect | -3.2 | -4.7 |

Source: CMS, CBO,

- So we have two estimates from two sources regarding the effect of the President's proposal. To review the bidding – the law is clear that it is only the estimate of CMS that triggers the funding warning and the requirement that the President submit a remediating proposal in response. And it certainly makes sense that the President would use CMS (like he uses OMB for his budget) to estimate the effects of his proposal.

- But once Congress takes up the President's proposal, or an alternative (see next section), the MMA does not spell out whose estimates relative to which baseline should be used to evaluate Congress' actions on the proposal. The MMA only states that the House Budget Committee Chairman must simply "certify" that the President's proposal "eliminates excess general revenue Medicare funding for each fiscal year in the 7-fiscal-year reporting period". (There is no parallel certification required of the Chairman of the Senate Budget Committee.) While the Budget Committees have historically relied on CBO to estimate the budgetary impact of all legislation, there is no explicit requirement they do so in this instance.

### What's Supposed to Happen Next?

- After the President submits the proposal to address the 45% funding warning, the Majority and Minority leaders (or their designees) of the House and Senate must introduce the bill within three legislative days. In the Senate, Senators Gregg and Baucus introduced the bill (S. 2662) on February 25. On the same day, the companion bill (H.R. 5480) was introduced in the House.

- After it is referred to the relevant committees (only the Finance Committee in the Senate), the committees can amend the bill, or alternatively, the committees can consider a different bill as long as the bill is entitled "a bill to respond to a Medicare funding warning." (Note that the Senate-passed version of the 2009 budget resolution assumes $1.3 billion in savings occurring in 2013 only, from a policy to be named later, to reduce the general fund contribution to Medicare spending back to 45%; the House-passed resolution has no parallel assumption.) The committees must

discharge the bills by June 30. If the committees have not acted by that time, each chamber has different procedures for moving forward.

- In the House, if a final vote on the legislation has not occurred by July 30, a fallback procedure is available. The legislation will be discharged from committee after an additional 30 calendar days (including five legislative days) if any member makes a motion to discharge the bill with the support of 1/5 of the total House membership. The motion would be highly privileged with no amendments allowed and only one hour of debate. MMA states that the House may adopt only one motion to discharge a particular committee during any session of a Congress.

- Within three days of any committee being discharged from further consideration of the bill, the Speaker shall bring the bill to consideration on the House floor. The bill is debatable for five hours, after which the bill is amendable under the five-minute rule. Any amendment offered must be certified by the Chairman of the Budget Committee that it would eliminate excess general-revenue funding for each fiscal year in the seven-year period. Debate on any amendment can consume up to one hour with the total time on amendments totaling up to 10 hours, at which point a final vote will occur.

- In the Senate, if the Finance Committee fails to discharge a bill by June 30, 2008, any Senator may move to discharge from the committee any bill titled "A bill to respond to a Medicare Funding warning." Only one such motion is in order in any session of Congress.

- The debate on the motion to discharge is limited to two hours with no amendments. If the full Senate approves the discharge motion, any member may move to proceed to consideration of the legislation. However, the motion to proceed to the bill is debatable and there is no limit on debate of the bill should the Senate agree to the motion to proceed. As a result, both the motion to proceed and the bill itself are subject to filibuster, and there is no guarantee the legislation will receive a final vote.

- It is important to note that there are no mechanisms forcing action to conclusion should any of these requirements be ignored. In addition, should a bill pass both Houses, there are no additional procedural guidelines for consideration in a conference committee.

**The Drumbeat Continues…Will Anything Happen?**

- Last week, the Trustees issued their report for 2008, which marks the third consecutive year that the Trustees have projected that the 45% threshold will be breached in the next seven years . The press release on the report summarizes what this latest Trustees Report says:

> As required by the Medicare Modernization Act (MMA), the Trustees compare overall projected Medicare expenditures with the program's "dedicated revenues". . . The portion of program costs financed by general revenues (rather than by "dedicated revenues") is projected to exceed 45% in 2014. Because this result falls within the first 7 years of the projection period (2008-2014), the Trustees have issued a determination of "excess general revenue Medicare funding" for the third consecutive year.
>
> When this determination is made in two consecutive Trustees Reports, a "Medicare funding warning" is triggered. . . .The Medicare funding warning was first triggered by the 2007 report and is triggered again with the 2008 report. The funding warning requires the President to propose legislation to respond to the issue within 15 days following the release of the next fiscal year's budget and the Congress is required to expeditiously consider the President's proposals. President Bush submitted legislation in February 2008 in response to the 2007 Medicare funding warning[,] and Congress has taken no action. As a result of the new funding warning, the President must again submit to Congress proposed legislation to respond to the warning within 15 days of the release of the next fiscal year's budget.

- Where the HHS press release says that "the President must *again* [emphasis added] submit to Congress proposed legislation to respond to the warning within 15 days of the release of the next fiscal year's budget," the press release must mean the next President, who would be submitting such legislation for his or her first time.

- What is not clear from the MMA is what is supposed to happen next year if Congress enacts the proposal that President Bush submitted in February (or an alternative to that). That proposal may address the 45% issue for 2013, but it is not clear what it would do for 2014 under the latest projections by CMS.