

February 22, 2010, 10:00 a.m. EST

MEMORANDUM

FROM: Michael Hammond

RE: New Obama Health Care Draft

As of this hour, there is an 11-page document on the White House web site outlining Obama's newest version of ObamaCare. Before laying out a summary of the most recent Obama proposal, I would like to make a couple preliminary points:

PRELIMINARY POINT #1: OBAMACARE CANNOT BE PASSED THROUGH RECONCILIATION

There are several reasons for this:

First, you cannot get the bill through the House without "fixing" abortion, and you cannot do abortion on reconciliation in the Senate.

Cao will not be the deciding vote. This means that, if absolutely nothing has changed, the current House vote count on the House bill is 217-216. But things have changed:

- Public support for ObamaCare has continued to sink through the floor.
- Between 10 and 12 "yes" votes would vote against the Senate bill based on its abortion language.
- Many House Democrats are still uncomfortable about the "Cadillac tax."

But, under the Byrd Rule (which prohibits reconciliation language with budgetary implications which are only ancillary to the policy ramifications), you can't fix abortion on reconciliation. We have asked Senate parliamentarian Alan Frumin concerning our ability to offer abortion amendments to reconciliation, and he has adamantly stood by the position that this is not allowed. And, to get around the Byrd Rule, the Senate requires 60 votes. Without an abortion "fix," this bill cannot pass the House.

Furthermore, the new provision to allow the government to set insurance rates is also a violation of the Byrd Rule.

Also, the \$60 billion union "fix" requires a \$62 billion offset. And the additional substantial costs of Obama's proposal would also have to be offset. Assuming they take the entire \$2.5 trillion package and pass the whole thing through reconciliation, they can pay for some of these costs with the phony \$124 billion budget "surplus" contained in the Senate-passed bill. The downside of this is that the insurance "reforms" (preexisting conditions, limits on copayments, etc.) which form the core of the bill will be thrown out under the Byrd Rule.

But, assuming they are using reconciliation for nothing more than a "fix," they have to come up with a new set of offsets. The offsets on the Senate bill are unavailable to them. And it's not like it has been easy to come up with the offsets they have.

In order to comply with the 1974 Act, these offsets would have to make the reconciliation bill compliant with the reconciliation instructions during the first five-year window and revenue-neutral in every year thereafter. Thus far, NO VERSION OF THE LEGISLATION HAS BEEN ABLE TO COMPLY WITH THIS REQUIREMENT, EVEN USING THE PHONY ACCOUNTING GIMMICKS.

Incidentally, Pelosi is now demanding that the Senate act on reconciliation before House members are forced to put their necks on the line again. But a Senate-initiated tax bill is unconstitutional, and would be "blue slipped" in the House.

Incidentally, the 1974 Act allows an unlimited number of amendments to be offered, without debate, at the end of the 20-hour statutory time for debate. My recommendation would be that, if Senate Democrats decide to invoke the "nuclear option" and throw out the Senate rules in order to do reconciliation, that the first ten amendments be the pro-gun agenda.

Finally, the Senate has failed to comply with the reconciliation instructions that mandated reporting by

October 15. And, although they may get a pass on this, the production of a new concurrent budget resolution will extinguish this possibility unequivocally.

PRELIMINARY POINT #2:

What bothered the American people, as much as anything, was the perception that the Senate's ObamaCare bill was produced by fraud, secrecy, corruption, bribery, and extortion. Rather than improve the process, the White House has actually made it more corrupt by --

- threatening to fraudulently take a process restricted SOLELY to deficit reduction and using it to pass the biggest deficit engine in human history; and
- refusing to release legislative language, in the hope that controversies can be kept secret.

WHAT THE NEW OBAMA PROPOSAL WOULD DO

The newest Obama proposal consists of the Senate bill, tweaked in the following ways:

- Elimination of Ben Nelson's Nebraska bribe, in favor of more generalized federal Medicaid aid to states which Nelson was demanding.
- Taxes:
 - increase of the "Cadillac tax" threshold from \$23,000 to \$27,500;
 - increase of the Senate tax on "high-income" households by 2.9% for income from interest, dividends, annuities, royalties, rents, and trade and business income;
 - increase of pharmaceutical taxes from \$23 billion to \$33 billion;
 - miscellaneous "loophole" closings dealing with biofuels and "unjustified tax shelters."

- An unspecified "series of changes" in the long-term care Ponzi scheme created by the bill.
- Delay in the \$67 billion assessment on health insurers -- and modification of the \$20 billion fee on medical devices.
- Full phase-out of the "donut hole" by (1) initially offering a \$250 Medicare rebate to those who hit the "donut hole," and (2) claiming to close the hole entirely by 2020 by phasing down the coinsurance requirement to the standard rate applicable to non-donut hole prescription drug expenditures.
- Increase the Senate's \$8.5 billion for "community health centers" (theoretically benefiting Planned Parenthood and ACORN-type groups) to \$11 billion.
- Destruction of "grandfather clauses" allowing you to "keep the coverage you currently have" by adding a whole bunch of new mandates on the policies "you currently have," including:
 - coverage of dependents to age 26;
 - federally mandated changes in appeals processes;
 - rescission prohibitions;
 - limits on copayments and deductibles;
 - bans on preexisting conditions;
 - mandated review of rates, conducted by states but in accordance with oversight by HHS.
- Increase of the subsidies for families earning below \$55,000.
- A tweak of the penalties which Americans would have to pay if they refused to purchase government-mandated insurance by, inter alia, slightly lowering the Senate's flat-dollar penalties by \$55 (indexed by inflation) -- and also tweaks the formula for determining penalties imposed on employers.
- Creation of a new Health Insurance Rate Authority to

review rates -- and oversee state reviews in a way that would effectively give the federal government regulatory control over insurance rates.

-Creation of a series of cost-control measures, including:

- a database on sanctions which have been imposed;
- a registration requirement for billing agencies;
- broader access to a database concerning "quality control and peer review organizations";
- liability for Medicare administrative contractors who submit bills on behalf of non-eligible providers;
- strengthened standards for community mental health centers;
- limits on bankruptcy protection for "fraudulent health care providers";
- expedited analysis of claims data;
- criminal penalties for sale of private Medicare beneficiary information;
- a study on the benefits of the medical use of universal product numbers;
- "profiling" of Medicaid prescription drug use;
- tightened review of and cuts to Medicare Advantage;
- removal of current statutory limits on random medical review of certain Medicare payments;
- establishment of a Medicare/IRS datamatch;
- an expansion of FTC enforcement authority to limit payments for limiting development and marketing of generic drugs