

* Written Before Moynihan's cancellation of 2/25-4:30pm meeting.

MEMORANDUM

TO: Hillary Rodham Clinton February 24, 1993
FR: Chris Jennings X-2645
RE: Thursday Hill Visits with Moynihan, Sasser, and Riegle
cc: Melanne, Ira, Steve R., Howard P.

Tomorrow, starting at 4:30, you are scheduled to hold consecutive meetings with Finance Chairman Moynihan, Budget Chairman Sasser, and Finance Subcommittee on Medicaid Chairman Riegle. The timing of these meetings are particularly opportune because of the relevance of these Members (especially Moynihan and Sasser) opinions and responsibilities with regard to reconciliation and health care reform.

Following this memo, you will find a brief description of the three Members and their health care records.

Before summarizing the Senators' health backgrounds, I think it would be useful to fill you in on two late night conversations I had with the Chief of Staff of Majority Leader Mitchell's office, John Hilley, and the chief health analyst of the Senate Budget Committee, Kathy Deignan. (John debriefed me on today's afternoon meeting with the Chairmen and Kathy updated me on some budget resolution issues that are extremely important). Highlights include:

- * John stated that there remains a consensus (although I am not certain where Appropriations Chairman Byrd stands) among the Senate Chairmen (no women chairs) that there will not be a sufficient number of votes for two tax bills and that a one-vote reconciliation strategy remains the best (and probably the only) option to pursue if there is a desire to pass health reform this year in the Senate. (FYI, Sasser shares this position and, although Moynihan has not yet focused on this because he has been sick, Hilley is confident he will stick with Mitchell on this issue).

- * John (who used to be the Staff Director of the Senate Budget Committee) said that it would be difficult to impossible, on both procedural and political grounds, to develop -- much less pass -- a second reconciliation bill. Assuming a second bill is even possible (and that is not even clear to him), he cited 3 primary other reasons why it would be problematic:

(1) it is difficult to see how a second reconciliation package would pass a budget rules test known as the reconciliation "preponderance" test because, to do so, the bill must fundamentally be a deficit reduction bill. He believes it would be virtually impossible for a health reform bill to meet this test because it is difficult to see how it would be possible to come up with the taxes and cuts necessary to meet the deficit reduction test AND to underwrite the costs of a health care package.

(2) any attempt to get around the preponderance test (perhaps by splitting up the deficit reduction provisions between the two separate packages) would likely invite even more political problems for the first reconciliation bill. This is because the tax to cuts ratios would likely be even more difficult to defend than they are now.

(3) it is extremely difficult to see this Congress finishing action on even one reconciliation package before September. Even if they break a record in this regard and pass it in the summer, it is virtually unthinkable to see a second reconciliation process completed this year or next. (Congress rarely takes a bite out of the deficit in any significant way more than once every two years).

* In order to accomodate the concerns of both the House and the Senate, one budget reconciliation/health care strategy could be as follows:

(1) Pass the budget resolution with a health reform plus (see discussion below) around March 20th;

(2) Immediately bring up and pass the stimulus package with a commitment that cuts will be in the reconciliation package;

(3) Have the House pass its reconciliation bill first WITHOUT health reform (sometime in late May/early June);

(4) Have the Senate -- as it usually does in its more slow and deliberate way -- pass its reconciliation bill WITH health reform after the House passes its bill;

(5) Have the House pass a protected health reform bill that they can bring to a joint Senate/House conference; and

(6) Go to conference in September and work out a deal that can pass the Congress and be presented to the President.

John endorses the above strategy and it may well be attractive to the House leadership as well. We may find this approach attractive to because we would not be refereeing the dispute and leaving the decision up to the Congress.

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* My conversation with Kathy Deignan of the Budget Committee centered around what provisions in the Senate budget resolution would be necessary to assure that the President would need only 51 votes to pass a reconciliation bill WITH a health reform package attached. Two health "plugs" are apparently necessary are:

(1) A "Reserve Fund" provision that allows spending on health reform (reform can be very broadly defined) to be paid for by new revenues without a 60 vote budget point of order must be included in the budget resolution. (Our last two Senate budget resolutions have had this provision, so there is precedent; nothing is easy in the Senate, though, and most Republicans are likely to oppose.)

(2) A separate waiver of a budget provision known as the "Byrd" rule will likely be necessary to be incorporated into the resolution to assure that the health care provisions imperative for the passage of the bill are not stripped on the Senate floor because they do not come into line with the rule.

There are a number of provisions of the Byrd rule, but one of the most far reaching is one that disallows any provision that is "extraneous" (defined as has no impact on the budget) to the bill. (This could include, for example, insurance market and medical malpractice reform because they have no cost impact). I know of no such waiver related to health that has ever been attached to protect unnamed health provisions in a Senate budget resolution.

The Byrd waiver will be more difficult to get included in the budget resolution than the "Reserve Fund" provision. I do not believe that Senator Byrd has taken any formal position on whether he would support such a waiver.

* Although it will be difficult to get the two "plugs" included in any budget resolution, it will not be impossible. If the above provisions are not incorporated, however, it appears likely that the President and you will have to find 60 votes to pass health care. John Hilley believes they can find the votes for a "plugged" Senate resolution. While Kathy's confidence does not match John's, she does believe it can be done. The bottom line, though, is that it must be done because we cannot count on 60 votes.

* Lastly, in today's meeting with Senator Sasser, it may be advisable would be wise not only to get his opinion about what we should do with regard reconciliation, but to ask him for an update on any discussions he and/or his staff has had with Senator Byrd. If Senator Byrd is not supportive of a Byrd waiver provision, it will be extremely difficult to get that particular health plug in the reconciliation bill.