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THE WHITE HOUSE

WASHINGTON

November 7, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JAMES M. CANNON
FROM: JAMES E. CONNOR
SUBJECT: No-Fault Insurance

The President has reviewed your memorandum of November 6 on the above subject and has approved the following decision:

Number 1: Maintain current position of support for the no-fault concept, but opposition to Federal legislation.

Please follow-up with the appropriate action.

cc: Dick Cheney

THE WHITE HOUSE
WASHINGTON

November 6, 1975

MR PRESIDENT:

Secretary Coleman has written you another letter on this subject. It is attached at TAB B.

Jim Connor

THE WHITE HOUSE
WASHINGTON

ACTION

November 6, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON *Jin*
SUBJECT: No-Fault Insurance

In May of this year, you reviewed the question of Federal no-fault insurance legislation in a meeting with Jim Lynn, Secretary Coleman and the Attorney General. At that time, you expressed support for the no-fault concept, but stated your belief that it was an issue for individual states to resolve. In addition, it was clear at that time that key minority members of Congress strongly opposed Federal legislation and standards.

Secretary Coleman has sent you a memorandum requesting reconsideration of your decision not to support Federal no-fault legislation (Tab A). The Secretary cites as reasons for reconsideration:

- A. The resolution of a constitutional issue raised earlier by the Attorney General;
- B. Additional evidence that no-fault will yield cost savings to the consumer;
- C. The increasing likelihood that Congress will approve no-fault legislation and the need to affect the nature of this bill during its initial stages.

CONSTITUTIONAL ISSUE

The Attorney General originally questioned the constitutionality of the Senate proposal (S. 354), in that it would have required states to develop and implement at their own expense a Federally imposed program. The Senate bill has been changed to cure this defect by providing that if a state failed to adopt an acceptable no-fault plan, the alternative

Federal government plan would be implemented, administered, operated and maintained exclusively by the Federal government. The Attorney General and the Counsel's Office agree that this change cures the major constitutional defect.

However, Justice continues to question Federal no-fault legislation from the standpoint of Federalism. They argue that neither the potential benefits nor the somewhat slow pace in which states have adopted no-fault merit a further "imbalancing" of the Federal/state relationship.

Secretary Coleman, on the other hand, argues that no-fault is well within the Federal government's constitutional power to regulate interstate commerce, and that the House and Senate bills would minimize the Federal intrusion by giving the states wide discretion in setting benefits.

COST SAVINGS

There appears to be little doubt that no-fault does reduce the amount of the premium dollar consumed by administrative cost (now almost 55 percent of the total premium). Experience has shown that it is extremely difficult to predict the actual impact on premiums. Secretary Coleman cites evidence of Allstate and State Farm which indicates that, under certain assumptions of minimum service benefits, premiums could be reduced by up to 10 percent. However, these two companies caution against placing a high level of certainty on these anticipated benefits. Furthermore, they indicate that as minimum coverage increases, the average premium cost per individual could actually rise above current levels.

Experience in states that have adopted no-fault indicates that either because of legislated standards that are above the existing coverage, or because of consumer preferences to raise their base coverage, the actual out-of-pocket cost to the consumer can remain the same and in some cases increase.

Secretary Coleman argues that under any anticipated circumstance premiums for a specific level of coverage will be lower under a no-fault system than under the continuation of the current system.

CONGRESSIONAL STATUS

Max Friedersdorf indicates that it is far from certain that the Congress will pass no-fault legislation this session. The House Subcommittee on Consumer Protection and Finance has reported out a bill. However, the demands on the House Interstate and Foreign Commerce Committee to deal with other matters makes it unlikely that a bill will reach the floor and be approved this session.

On the Senate side, S. 354 has been reported out of Committee. Floor action has not been scheduled as of this point in time; however, action is expected before the end of the session. Seventeen Senators (2 members of the Republican leadership, 5 ranking minority committee members of the Senate, and 2 Democratic chairmen) have written to you to oppose Federal no-fault legislation (Tab B). They argue that to change the White House position now would cause "grievous" problems among these Senators when their support is needed on other issues currently before the 94th Congress.

Secretary Coleman, on the other hand, feels that no-fault is an increasingly popular issue that will gain enough support in the Congress for legislation to pass, if not this session, certainly the next session. He feels, therefore, that the Administration should act to structure the legislation during its initial stages and in the end to gain substantial public credit for this initiative.

RECOMMENDATION

Secretary Coleman's request has been circulated for comment among White House Senior Staff and the Attorney General. The predominant response has been to maintain your current position. OMB supports the current position, but also supports Federal legislation and suggests that the Administration reassess its position once it is clear what the Congress is likely to do. Bill Seidman also suggests another look after it is clear what the Congressional action will be.

There appears to be no question of whether a no-fault system is superior to what exists today. However, the

merits of no-fault do not appear to be the deciding factor for this decision. Rather, it is whether you feel there is merit for the Federal intervention at this point.

DECISION

WRC

1. Maintain current position of support for the no-fault concept, but opposition to Federal legislation (Buchen, Greenspan, Marsh, Friedersdorf, and Cannon).
- _____ 2. Maintain current position but reassess after it is clear what Congress will do this session (Lynn and Seidman).
- _____ 3. Initiate appropriate Administration action to affect the current bills or submit a new proposal (Coleman).



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

September 24, 1975

RL
The President
The White House
Washington, D. C. 20500

Dear Mr. President:

For the reasons outlined in the enclosed memorandum, I urge you to reconsider the Administration's position respecting no-fault automobile insurance.

Respectfully,

Bill

William T. Coleman, Jr.

Enclosure

cc: Attorney General
Secretary, Department of
Housing and Urban Development
Director, Office of Management
and Budget
Roderick M. Hills, Counsel to
the President



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

September 24, 1975

MEMORANDUM FOR THE PRESIDENT

SUBJECT: No-Fault Automobile Insurance

I strongly recommend that the Administration support the enactment of S. 354 and the similar H.R. 9650, bills to establish minimum national standards for State auto insurance plans. As you know, I recommended that we support S. 354 in my memorandum of April 23 of this year, and at that time you decided not to change the Administration's position. Since then, however, there have been two significant developments.

First, the bills have been altered so as to provide those States not enacting no-fault statutes of their own the option of having Federal officials administer the Federal standards. This change was suggested by the Attorney General in order to allay a constitutional problem he had with the earlier versions.

Second, important new data has come to light that bears on the question, which had earlier given some people trouble, whether no-fault would result in a reduction or an increase in premiums. The evidence, which this memorandum will summarize, is now strongly to the effect that it will result in a reduction.

We are all aware of the basic reasons for supporting no-fault. The present third-party system is uncertain, unfair, discriminatory and wasteful. I might add that it is a blight on the legal profession. Thus the Administration has always strongly supported the no-fault principle.

Heretofore, however, the Administration has taken the position that action in this area is best left to the States. The problem with that approach, however, is that State action in this area, thanks in large part to pressures from the trial bars which tend to wield power in

State legislatures, has been noticeably slackening in recent years. If there is to be movement, it must take place at the Federal level: the longer we hesitate, the more we open ourselves to the charge that our opposition to the Federal minimum standards approach is actually covert opposition to the no-fault principle itself.

No-fault legislation is, of course, comfortably within the Federal Government's constitutional power to regulate interstate commerce-- much more comfortably so, I might add, than many of the laws that have been passed and upheld under that rubric. (I would add that both the Senate and House bills leave wide discretion to the States in tailoring the benefits to their individual needs and are thus modest intrusions into State authority: they are true minimum standards bills.) Moreover, no-fault should prove a politically popular cause, and one that is consistent with the goals of other initiatives of this Administration. No-fault is pro-consumer and anti-waste. It will provide substantially increased benefits to the average accident victim. Like our various regulatory reform initiatives, it is calculated to provide a much more equitable and rational system while at the same time saving the ordinary citizen money and resulting in significant monetary savings system-wide.

The Administration can justly take credit for having made contributions to the development of S. 354 and H.R. 9650. Besides financing the development of the model State bill on which these two bills are based, it was Secretary Volpe who first discussed the minimum standards approach. The original Department of Transportation Auto Insurance Study and the Department-financed Milliman and Robertson costing model have provided much of the analytical and factual support for S. 354 and H.R. 9650.

The question of costs. Unfortunately, the waters have been muddied by false before-and-after comparisons which purport to show increased premiums after the adoption of no-fault but which fail to explain that the increase is due to inflation or the provision of more benefits. In the last analysis, and after discussing this matter with the people in the Department who have extensive involvement in no-fault, I believe that the clear weight of the evidence is to the effect that adoption of no-fault will reduce insurance premium costs below what they would have been without no-fault.

There never has been a truly comprehensive before-and-after analysis of no-fault, but I believe we can point to the following as evidence that the adoption of no-fault will save consumers money:

- (1) The present system is highly inefficient, and it is difficult to believe that a better system cannot be devised. Only 44 cents of each premium dollar paid to the insurance companies is returned to the consumer in the form of benefits. Some of the other 56 cents is used for legitimate administrative expenses, but a great deal is wasted for lawyers fees, nuisance claims, and unnecessary adjustment expenses.
- (2) The independent study performed by Milliman and Robertson at the behest of the State insurance commissioners and funded by the Department, and updated by the Senate Commerce Committee, indicates that adoption of no-fault will not raise the average premium in any State, and will lower premiums in many States. This study was first done in 1972 and although it has been widely discussed, it has never been convincingly attacked.
- (3) The reports from most States that have adopted true no-fault plans have indicated cost savings to the average motorist. For instance, New York, which has a very sophisticated insurance department and a broad no-fault law, recently announced that insurance rates for personal injury insurance had fallen 19% after the adoption of no-fault. The Massachusetts commissioner of insurance has estimated that compulsory auto insurance rates would be 100% higher if no-fault had not been adopted. The Connecticut commissioner is the only commissioner from a State that has adopted no-fault who has said it would result in rate increases. (I might add that the Connecticut plan is not consistent with the standards prepared in the Senate and House bills.)
- (4) Both the Senate and House asked State Farm and Allstate to project the effects of no-fault on rates on a State-by-State basis. In the Senate, using the same techniques developed by Milliman and Robertson, Allstate projected increases and State

Farm projected decreases. One of the reasons for this disparity was a difference in choice of assumptions. Although S. 354 and H. R. 9650 required only a minimum of \$5,000 in survivor's benefits, Allstate assumed that the States would adopt more than the Federal minimum and in fact would require minimum payment of \$15,000 in survivor's benefits.

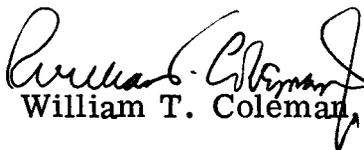
The House Subcommittee requested Allstate and State Farm to "review" their figures and to base their projections on a standard \$5,000 for survivor's benefits. Using these figures both Allstate and State Farm produced cost savings in almost all States. (See attachments.) Nationwide the Allstate figures indicated, according to Chairman Van Deerlin, a saving of 9.3 percent or \$800 million a year. *

Allstate did show increases in certain rural States, but the number was limited and was due to increased coverage. At present, many accidents in rural areas involve only one car; a drunken driver goes off the road and smashes into a tree. There is no one to sue, and the injured party's insurance often does not cover work loss or survivor's benefits. No-fault, on the other hand, would cover this injury and pay benefits; that is why it would increase rates.

In summary, I think the evidence strongly points to substantial premium savings. These savings, plus the increased benefits and equity of a no-fault system, all justify Federal intervention in view of the lack of recent State activity. I think that the most recent State Farm-Allstate projections really should put an end to the cost argument especially when one considers the "hostile witness" nature of Allstate. I am sure that Allstate was unduly pessimistic and State Farm unduly optimistic with respect to results, but if one discounts both projections appropriately, there are still very substantial cost savings.

This is therefore a just cause, one entirely consistent with other of our legislative efforts, and into the bargain is likely to prove politically popular. S. 354 and H.R. 9650 were borne of the efforts of this Administration, and it would be a pity were we not to get the credit for them (or, indeed, to get the blame for dragging our feet.) There is every

chance the Senate will again pass no-fault, and we have heard that a no-fault bill will be reported out from committee in the House and that there is a very good chance of passage in the House. If we moved now we could certainly aid the House action and thereby obtain credit for passage. I strongly recommend that the Administration support these measures.


William T. Coleman, Jr.

Attachments



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

October 31, 1975

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Following our conversation the other day in which we reviewed a great many subjects, including No-Fault Automobile Insurance, I am pleased to respond to your interest concerning the latest estimates of the savings that a reformed accident compensation system could produce for consumers.

Even those in the insurance industry who oppose Federal no-fault legislation now agree that it would bring savings. These savings, estimated last summer, generally appear to be as follows:

- State Farm, the largest auto insurer and a proponent of the Federal no-fault "standards" legislation, estimates average nationwide savings in private passenger car premiums of 10 percent.
- Allstate, the second largest auto insurer and an opponent of Federal no-fault, independently estimates average savings of 9.3 percent.

There has been no serious challenge to these projections, which compared the costs of the vastly improved benefits afforded by a policy meeting the standards of S. 354 with the costs of existing auto insurance policies.

The matter of no-fault's costs and benefits to the consumer is further explained in my memorandum to you of September 24, 1975. I would be pleased to elaborate on any of the foregoing if you desire.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Bill', is positioned above the typed name.

William T. Coleman, Jr.

THE WHITE HOUSE
WASHINGTON

November 7, 1975

Jim Cavanaugh:

Since you will be acknowledging the other letter from Secretary Coleman thought you should have a copy of this one.

Trudy Fry

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