Health Reform: Not Your Mother’s Implementation

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Handy Tool

• Health Reform GPS
  – www.healthreformgps.org
What is Implementation About?

<table>
<thead>
<tr>
<th>The Technical</th>
<th>The Unprecedented, High Stakes Political</th>
</tr>
</thead>
<tbody>
<tr>
<td>Range of issues</td>
<td>Litigation</td>
</tr>
<tr>
<td>Timeline</td>
<td>State nullification</td>
</tr>
<tr>
<td>Implementation policymaking tools</td>
<td>Congressional election politics</td>
</tr>
<tr>
<td>Stakeholders</td>
<td>Presidential election politics</td>
</tr>
</tbody>
</table>
Ambiguous statute, 24 issue categories, hundreds of issue sub-categories, & endless policy decisions

<table>
<thead>
<tr>
<th>Insurance market reforms</th>
<th>Disease prevention and wellness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage choices</td>
<td>Health care workforce and health care access</td>
</tr>
<tr>
<td>Affordability of coverage</td>
<td>Medicare and Medicaid transparency and enforcement</td>
</tr>
<tr>
<td>Coverage responsibilities</td>
<td>Patient-centered outcomes research</td>
</tr>
<tr>
<td>Medicaid/CHIP</td>
<td>Medicare, Medicaid and CHIP Program Integrity</td>
</tr>
<tr>
<td>Maternal &amp; child health</td>
<td>Elder Justice Act</td>
</tr>
<tr>
<td>Health care quality improvement</td>
<td>Access to innovative medical therapies</td>
</tr>
<tr>
<td>Medicare improvements for patients and providers</td>
<td>Class Act</td>
</tr>
<tr>
<td>Medicare payment</td>
<td>Revenue provisions</td>
</tr>
<tr>
<td>Medicare Advantage</td>
<td>Indian Health Care improvements</td>
</tr>
<tr>
<td>Medicare Part D</td>
<td>Rural protections</td>
</tr>
<tr>
<td>Medicare sustainability</td>
<td>Miscellaneous</td>
</tr>
</tbody>
</table>
Timeline

• Figuratively speaking within minutes of enactment. e.g. –
  – 2010 High risk pools
  – 2010 Short term insurance reforms
  – 2010: establishes Patient-Centered Outcomes research Institute and spending authority
  – 2010: Community Transformation Grants
  – 2010 Medicaid global payment demonstrations
  – 2011 National Strategy to Improve Health
  – 2011 Center for Medicare and Medicaid Innovation (20 pilot “opportunities”
  – 2011 Community based collaborative care networks
  – 2011 Community health center expansion
  – 2012 Medicare shared savings
  – 2012 Hospital value-based purchasing and readmissions reduction program and related programs
  ETC.
Implementation Policymaking Tools

• Key question: what type of legal force does either Congress or the Executive Branch want its policy to have?
  – Executive branch may be ordered to interpret or may exercise its discretion to do so unless barred by Act of Congress

• Rulemaking: the ultimate legal weapon
  – Mandatory
    • health insurance market regulation rules
  – Discretionary
    • Medicare and Medicaid reforms
  – Negotiated
    • MUA/HPSA

• Statements of policy and guidance
  – High risk pool notice of availability
  – IRS small employer tax credits
  – Policy statements may be followed by a rule

• Website agency postings
• Grant notices
How the Stakeholders Get Heard (In Normal Times)

• The legislative process is highly political and intense. The implementation phase is no less so.
  – Regulatory comments
  – Education of/outreach to political actors (Congress, White House/OMB)
  – Political contributions
  – Highly visible briefings and “show of force” letters
    • Mental health parity
    • 2008 MUP/HRSA rule (predating health reform)
What Makes This Time Different?

• This time *is* different
• Fundamental nature of a mandate
• Political “capture” of health reform issue at all levels of government
  – Mid term elections
  – Presidential election
• The broader effort to politically capture and define the Obama Presidency, from its earliest days
This Round is Not Business as Usual

- Not the familiar stakeholder battles of laws past; a deeper effort to repeal the law’s legislative core
- Litigation as the weaponization of political resistance
  - Unconstitutionality of the individual mandate
  - Unconstitutionality of federal regulation of state programs in furtherance of the mandate (Medicaid)
  - Unconstitutionality of federal mandate in states with nullification statutes
- Rapid movement: the Administration’s best weapon
  - High focus on early insurance reforms and high risk pool
  - Formation of stakeholder working groups (e.g., state legislator working group, other working groups)
  - Stressing the “hereness” of health reform
  - The “2014” problem
- A battle over whose narrative wins, played out in the media
The Stakes for Community Health Systems Could Not be Larger

• $1 trillion dollar investment in health insurance reform and health system redesign
• The fundamental rebuilding of Medicaid, on whose shoulders rest the success of health reform, as evidenced by the litigation
• The reinvention of the U.S. health insurance market into a payer system that is strong enough to support quality health care for those who need it rather than so weak that it survives only by avoiding the sick
• Stable insurance coverage as the platform of value-based purchasing and the logic model for basic reforms in the business of health care. E.g. --
  – Medical homes
  – Accountable care
  – Episodes of care and global payments
  – Community based collaborative care
But Community Health System Reform Also Represents a Key Implementation Tool

- Near-term community events will belie reform
  - Rise in the uninsured
  - Rise in price of health insurance
  - Medicaid financing crisis
- At the same time, communities can do much to enable reform implementation and success
  - Within existing payers, look for quality, efficiency, and health information reforms; no payer more important than Medicaid.
  - Expect cross-payer collaboratives, clinical and financial integration, and health information that transcends the specific payer and reaches community-wide quality