

# Health Reform: Not Your Mother's Implementation

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# Handy Tool

- Health Reform GPS
  - [www.healthreformgps.org](http://www.healthreformgps.org)

# What is Implementation About?

<b>The Technical</b>	<b>The Unprecedented, High Stakes Political</b>
Range of issues	Litigation
Timeline	State nullification
Implementation policymaking tools	Congressional election politics
Stakeholders	Presidential election politics

# Ambiguous statute, 24 issue categories, hundreds of issue sub-categories, & endless policy decisions

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

# 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