

## The passage of Obamacare is a lesson in how to outmaneuver institutions and pass controversial policy legislation

*Approved by Congress four years ago, the Affordable Care Act, or 'Obamacare' is the Obama administration's signature policy, and is now coming into force, with an enrollment deadline at the end of March. While controversy over Obamacare continues, it is important to remember that its passage through Congress was anything but smooth. [Erik J. Blutinger](#) looks at how the Obama administration was able to learn from the mistakes of previous Democratic attempts at healthcare reform, and overcame the influence and opposition of institutions such as the media and Congress in order to get the reform passed.*



Watch this space: on March 31st, the Obamacare enrollment deadline officially ends with [no extension planned](#) for the American public. The deadline serves as an important reminder of how policymakers often must work to outmaneuver institutions in order to pass controversial legislation like immigration and gun control. Ultimately, the passage of the Affordable Care Act can be credited to the Obama administration's outmaneuvering of the institutions that are often destabilizing forces in the realm of American health policy.

Institutions are in place to help regulate, organize and manage numerous groups of actors in the process of making policy, representing a set of rules, regulations and guiding principles that help guide the policy making process. By helping to shape the rules of our society, institutions define what we can imagine achieving.

How can they interfere with health reform? The answer may lie in the historical context of passing national health insurance (NHI), which was expected to fail once again under President Obama after the previous failures of passing health reform in 1948, 1965, 1974, 1978 and 1994. For the Democrats, these failed attempts made it clear: 'get health reform passed however, whenever and whatever you can,' since supporters of already passed legislation can more easily paint any attempts to modify it as a [disturbance to the status quo](#).

During passage of the Affordable Care Act (ACA) in 2010, key stakeholders used their own guiding principles in shaping their stance on key issues across media networks and inside the halls of Congress. While one group focused on the 30 million uninsured badly needing health care (Democrats), another group focused on the length of the actual bill and "unsustainable costs" for providing care to those uninsured (Republicans).



President Barack Obama, Vice President Joe Biden, and senior staff, react in the Roosevelt Room of the White House, as the House passes the health care reform bill, March 21, 2010. (Official White House Photo by Pete Souza)

It is no secret that institutions often play a critical stalling role for future policy formulation despite widespread

popular support for change. For gun control, [robust theories](#) have shown how politicians may often vote contrary to most public opinion. For [immigration](#), financial incentives and the mechanism for financing campaigns can mount extreme pressures on politicians to vote along their constituency concerns. Both issues remain key policy priorities, now being heavily debated by the U.S. Congress.

For President Obama, several previous failed attempts to pass health reform likely influenced his outlook for the ACA. For example, the failed Hillary Clinton health plan in 1994 forced the institutional role of governmental deal-making to move to behind closed doors. The pharmaceutical industry was not on-board with the Clinton plan and so Obama reversed the tide, by cutting a deal with the industry for \$80 billion in private. According to insiders, the White House also negotiated \$155 billion in savings with hospital associations. [No records of both deals](#) were ever made available to the public.

Similar to the Clinton years, the political institutions of reporting news (media), drafting legislation (Congress), representing the State (President) and voicing an opinion (public) were all critical towards passage of Obamacare.

Firstly the media, whose impact cannot be overstated after airing footage of heated arguments between pro-reform politicians and local opponents of the Bill on national television. The rhetoric would ultimately help coin the phrase “death panels.” This swayed public opinion with polls registering concerns for reform while causing other spectators to ponder their own losses (rather than gains) from the bill. How could the media exert such grand influence on the policy process? It is easily accessible at home, simple to understand even for the illiterate, and lacks statutory rules in avoiding misleading headlines and potentially serious discussions on key components (i.e. Obamacare).

For Obamacare, the political institutions played a critical role. Historically, congressional committees retained most of the power in passing health legislation such as for President Nixon, whose attempts for National Health Insurance were [halted by the House Ways and Means Committee in 1971-72](#). For Obama, his hurdle was the (bipartisan) Senate Finance Committee. Thus, Obama cleverly chose to have the Finance Committee lead senatorial debates on the bill and allowed the legislation to craft the legislation, placing power into the hands of the Committee’s Democratic Chairman, Senator Max Baucus.

From a public perspective, grassroots efforts placed pressure on the White House and Congress to pass reforms conducive to their respective sides. On the conservative side, the Tea Party remained staunchly opposed to the bill including a [New York Times survey](#) taken shortly after passage in 2010, showing 90 percent of Tea Party supporters disapproving of Obama’s handling of the reform efforts and bringing the country toward “socialism.” Meanwhile from the progressives, organizations like [Health Care for America Now](#) (HCAN) brought together hundreds of organizations to push for the “public option” in both the House and Senate versions of the bill.

Meanwhile for Congress, parliamentary regulations make it exceedingly difficult to pass controversial legislation with numerous procedural tactics used for obstructionism. Fortunately for Obama, Democratic Senate Majority Leader Harry Reid used a clever array of tricks for bypassing parliamentary obstacles for the Bill. On Dec. 19, 2009, Senator Reid filed a series of amendments for the Senate bill as quickly as possible, all with little substantive value, in order to “[[fill](#)] the amendment tree” and avoid other, potentially more damaging amendments from being filed. This tactic prevented opponents from derailing the bill’s passage any further since every bill is permitted an order of amendments, no matter how damaging towards passage they may be.

Finally there is the White House, where President Obama skillfully used parts of the Executive branch to pass reform. Once elected President, Obama promptly moved the former Director of the Congressional Budget Office (CBO), formerly a key player in the Clinton Health initiative in 1993, Peter Orszag, to become the Director of the OMB (Office of Management and Budget). This move helped Obama insure that the health bill would include provisions that were likely to score well at CBO.

Obama conveyed a new sense of urgency with reform and made it appear as a moral dilemma. He used an arsenal of stump speeches, television interviews and diplomatic visits to push his agenda, even using the words from the popular politician Ted Kennedy of Massachusetts to declare “...the time for bickering is over....Now is the time to deliver on health care” in his [speech to Congress](#). His insiders agreed on a key lesson from the 1990s, as

well, to control public anxiety by promising those with good insurance to still keep their coverage at the time – a decision that has since been challenged by many insurers [to the detriment of millions](#).

As we have seen, institutions can create new ways of thinking. The previous failures of passing NHI helped to set everyone's expectations on what was achievable by President Obama. The political system has resisted changes through time while the media continues to influence the framing of legislation by mobilizing public opinion.

Remarkably, President Obama defied all odds in achieving the unthinkable task, defying decades of historical barriers to National Health Insurance to institute Obamacare. While the values of institutions are often reflected in the results produced by different actors in the process, one thing remains clear: successful health policy depends heavily on the kinds of institutions involved.

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*Note: This article gives the views of the authors, and not the position of USApp– American Politics and Policy, nor of the London School of Economics.*

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