



**SENATE SUBSTITUTE AMENDMENT 1,  
TO 2009 SENATE BILL 362**

1       **AN ACT** *to repeal* 632.89 (2) (a) 2., 632.89 (2) (b), 632.89 (2) (c) 2., 632.89 (2) (d)  
2           2., 632.89 (2) (dm) 2., 632.89 (3m), 632.89 (6) and 632.89 (7); *to renumber*  
3           632.89 (2m), 632.89 (4) and 632.89 (5); *to renumber and amend* 632.89 (2) (a)  
4           1., 632.89 (2) (c) 1., 632.89 (2) (d) 1., 632.89 (2) (dm) 1. and 632.89 (2) (e); *to*  
5           **amend** 40.51 (8), 40.51 (8m), 46.10 (8) (d), 46.10 (14) (a), 49.345 (8) (d), 49.345  
6           (14) (a), 66.0137 (4), 120.13 (2) (g), 185.981 (4t), 185.983 (1) (intro.), 301.12 (8)  
7           (d), 301.12 (14) (a), 632.89 (title) and 632.89 (2) (title); *to repeal and recreate*  
8           632.89 (1) (b), 632.89 (1) (em), 632.89 (4) (title) and 632.89 (5) (title); and *to*  
9           **create** 111.91 (2) (qm), 609.71, 632.89 (1) (at), 632.89 (3), 632.89 (3c), 632.89  
10          (3f), 632.89 (3p), 632.89 (4) (b), 632.89 (5) (a) (title) and 632.89 (5) (c) of the  
11          statutes; **relating to:** health insurance coverage of nervous and mental

1 disorders, alcoholism, and other drug abuse problems; providing an exemption  
2 from emergency rule procedures; and granting rule-making authority.

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***Analysis by the Legislative Reference Bureau***

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3 **SECTION 1.** 40.51 (8) of the statutes, as affected by 2009 Wisconsin Act 28, is  
4 amended to read:

5 40.51 **(8)** Every health care coverage plan offered by the state under sub. (6)  
6 shall comply with ss. 631.89, 631.90, 631.93 (2), 631.95, 632.72 (2), 632.746 (1) to (8)  
7 and (10), 632.747, 632.748, 632.83, 632.835, 632.85, 632.853, 632.855, 632.87 (3) to  
8 (6), 632.885, 632.89, 632.895 (5m) and (8) to (17), and 632.896.

9 **SECTION 2.** 40.51 (8m) of the statutes, as affected by 2009 Wisconsin Act 28, is  
10 amended to read:

11 40.51 **(8m)** Every health care coverage plan offered by the group insurance  
12 board under sub. (7) shall comply with ss. 631.95, 632.746 (1) to (8) and (10), 632.747,  
13 632.748, 632.83, 632.835, 632.85, 632.853, 632.855, 632.885, 632.89, and 632.895  
14 (11) to (17).

15 **SECTION 3.** 46.10 (8) (d) of the statutes is amended to read:

16 46.10 **(8)** (d) After due regard to the case and to a spouse and minor children  
17 who are lawfully dependent on the property for support, compromise or waive any  
18 portion of any claim of the state or county for which a person specified under sub. (2)  
19 is liable, but not any claim payable by an insurer under s. 632.89 (2) or ~~(2m)~~ (4m) or  
20 by any other 3rd party.

21 **SECTION 4.** 46.10 (14) (a) of the statutes is amended to read:

1           46.10 **(14)** (a) Except as provided in pars. (b) and (c), liability of a person  
2 specified in sub. (2) or s. 46.03 (18) for inpatient care and maintenance of persons  
3 under 18 years of age at community mental health centers, a county mental health  
4 complex under s. 51.08, the centers for the developmentally disabled, the Mendota  
5 Mental Health Institute, and the Winnebago Mental Health Institute or care and  
6 maintenance of persons under 18 years of age in residential, nonmedical facilities  
7 such as group homes, foster homes, treatment foster homes, subsidized  
8 guardianship homes, residential care centers for children and youth, and juvenile  
9 correctional institutions is determined in accordance with the cost-based fee  
10 established under s. 46.03 (18). The department shall bill the liable person up to any  
11 amount of liability not paid by an insurer under s. 632.89 (2) or ~~(2m)~~ (4m) or by other  
12 3rd-party benefits, subject to rules that include formulas governing ability to pay  
13 promulgated by the department under s. 46.03 (18). Any liability of the patient not  
14 payable by any other person terminates when the patient reaches age 18, unless the  
15 liable person has prevented payment by any act or omission.

16           **SECTION 5.** 49.345 (8) (d) of the statutes is amended to read:

17           49.345 **(8)** (d) After due regard to the case and to a spouse and minor children  
18 who are lawfully dependent on the property for support, compromise or waive any  
19 portion of any claim of the state or county for which a person specified under sub. (2)  
20 is liable, but not any claim payable by an insurer under s. 632.89 (2) or ~~(2m)~~ (4m) or  
21 by any other 3rd party.

22           **SECTION 6.** 49.345 (14) (a) of the statutes is amended to read:

23           49.345 **(14)** (a) Except as provided in pars. (b) and (c), liability of a person  
24 specified in sub. (2) or s. 49.32 (1) for care and maintenance of persons under 18 years  
25 of age in residential, nonmedical facilities such as group homes, foster homes,

1 treatment foster homes, subsidized guardianship homes, and residential care  
2 centers for children and youth is determined in accordance with the cost-based fee  
3 established under s. 49.32 (1). The department shall bill the liable person up to any  
4 amount of liability not paid by an insurer under s. 632.89 (2) or ~~(2m)~~ (4m) or by other  
5 3rd-party benefits, subject to rules that include formulas governing ability to pay  
6 established by the department under s. 49.32 (1). Any liability of the person not  
7 payable by any other person terminates when the person reaches age 18, unless the  
8 liable person has prevented payment by any act or omission.

9 **SECTION 7.** 66.0137 (4) of the statutes, as affected by 2009 Wisconsin Act 28,  
10 is amended to read:

11 66.0137 **(4)** SELF-INSURED HEALTH PLANS. If a city, including a 1st class city, or  
12 a village provides health care benefits under its home rule power, or if a town  
13 provides health care benefits, to its officers and employees on a self-insured basis,  
14 the self-insured plan shall comply with ss. 49.493 (3) (d), 631.89, 631.90, 631.93 (2),  
15 632.746 (10) (a) 2. and (b) 2., 632.747 (3), 632.85, 632.853, 632.855, 632.87 (4), (5),  
16 and (6), 632.885, 632.89, 632.895 (9) to (17), 632.896, and 767.513 (4).

17 **SECTION 8.** 111.91 (2) (qm) of the statutes is created to read:

18 111.91 **(2)** (qm) The requirements under s. 632.89 relating to coverage of  
19 treatment for nervous and mental disorders and alcoholism and other drug  
20 problems.

21 **SECTION 9.** 120.13 (2) (g) of the statutes, as affected by 2009 Wisconsin Act 28,  
22 is amended to read:

23 120.13 **(2)** (g) Every self-insured plan under par. (b) shall comply with ss.  
24 49.493 (3) (d), 631.89, 631.90, 631.93 (2), 632.746 (10) (a) 2. and (b) 2., 632.747 (3),

1 632.85, 632.853, 632.855, 632.87 (4), (5), and (6), 632.885, 632.89, 632.895 (9) to (17),  
2 632.896, and 767.513 (4).

3 **SECTION 10.** 185.981 (4t) of the statutes, as affected by 2009 Wisconsin Act 28,  
4 is amended to read:

5 185.981 (4t) A sickness care plan operated by a cooperative association is  
6 subject to ss. 252.14, 631.17, 631.89, 631.95, 632.72 (2), 632.745 to 632.749, 632.85,  
7 632.853, 632.855, 632.87 (2m), (3), (4), (5), and (6), 632.885, 632.89, 632.895 (10) to  
8 (17), and 632.897 (10) and chs. 149 and 155.

9 **SECTION 11.** 185.983 (1) (intro.) of the statutes, as affected by 2009 Wisconsin  
10 Act 28, is amended to read:

11 185.983 (1) (intro.) Every such voluntary nonprofit sickness care plan shall be  
12 exempt from chs. 600 to 646, with the exception of ss. 601.04, 601.13, 601.31, 601.41,  
13 601.42, 601.43, 601.44, 601.45, 611.67, 619.04, 628.34 (10), 631.17, 631.89, 631.93,  
14 631.95, 632.72 (2), 632.745 to 632.749, 632.775, 632.79, 632.795, 632.85, 632.853,  
15 632.855, 632.87 (2m), (3), (4), (5), and (6), 632.885, 632.89, 632.895 (5) and (9) to (17),  
16 632.896, and 632.897 (10) and chs. 609, 630, 635, 645, and 646, but the sponsoring  
17 association shall:

18 **SECTION 12.** 301.12 (8) (d) of the statutes is amended to read:

19 301.12 (8) (d) After due regard to the case and to a spouse and minor children  
20 who are lawfully dependent on the property for support, compromise or waive any  
21 portion of any claim of the state or county for which a person specified under sub. (2)  
22 is liable, but not any claim payable by an insurer under s. 632.89 (2) or ~~(2m)~~ (4m) or  
23 by any other 3rd party.

24 **SECTION 13.** 301.12 (14) (a) of the statutes is amended to read:

1           301.12 **(14)** (a) Except as provided in pars. (b) and (c), liability of a person  
2 specified in sub. (2) or s. 301.03 (18) for care and maintenance of persons under 17  
3 years of age in residential, nonmedical facilities such as group homes, foster homes,  
4 treatment foster homes, residential care centers for children and youth and juvenile  
5 correctional institutions is determined in accordance with the cost-based fee  
6 established under s. 301.03 (18). The department shall bill the liable person up to  
7 any amount of liability not paid by an insurer under s. 632.89 (2) or ~~(2m)~~ (4m) or by  
8 other 3rd-party benefits, subject to rules which include formulas governing ability  
9 to pay promulgated by the department under s. 301.03 (18). Any liability of the  
10 resident not payable by any other person terminates when the resident reaches age  
11 17, unless the liable person has prevented payment by any act or omission.

12           **SECTION 14.** 609.71 of the statutes is created to read:

13           **609.71 Coverage of alcoholism and other diseases.** Defined network  
14 plans are subject to s. 632.89.

15           **SECTION 15.** 632.89 (title) of the statutes is amended to read:

16           **632.89** (title) ~~Required coverage of~~ **Coverage of mental disorders,**  
17 **alcoholism, and other diseases.**

18           **SECTION 16.** 632.89 (1) (at) of the statutes is created to read:

19           632.89 **(1)** (at) “Group health benefit plan” has the meaning given in s. 632.745  
20 (9).

21           **SECTION 17.** 632.89 (1) (b) of the statutes is repealed and recreated to read:

22           632.89 **(1)** (b) “Health benefit plan” has the meaning given in s. 632.745 (11).

23           **SECTION 18.** 632.89 (1) (em) of the statutes is repealed and recreated to read:

24           632.89 **(1)** (em) “Self-insured health plan” has the meaning given in s. 632.745  
25 (24).

1           **SECTION 19.** 632.89 (2) (title) of the statutes is amended to read:

2           632.89 (2) (title) REQUIRED COVERAGE FOR GROUP PLANS.

3           **SECTION 20.** 632.89 (2) (a) 1. of the statutes is renumbered 632.89 (2) (a) and  
4 amended to read:

5           632.89 (2) (a) *Conditions covered.* A group ~~or blanket disability insurance~~  
6 ~~policy issued by an insurer~~ health benefit plan and a self-insured health plan shall  
7 provide coverage of nervous and mental disorders and alcoholism and other drug  
8 abuse problems if required by pars. (c) to (dm) and as provided in pars. ~~(b) (c) to (e)~~  
9 (dm) and subs. (3) to (3f).

10          **SECTION 21.** 632.89 (2) (a) 2. of the statutes is repealed.

11          **SECTION 22.** 632.89 (2) (b) of the statutes is repealed.

12          **SECTION 23.** 632.89 (2) (c) 1. of the statutes is renumbered 632.89 (2) (c) and  
13 amended to read:

14          632.89 (2) (c) ~~Minimum coverage~~ Coverage of inpatient hospital services. If a  
15 group ~~or blanket disability insurance policy issued by an insurer~~ health benefit plan  
16 or a self-insured health plan provides coverage of any inpatient hospital treatment,  
17 the ~~policy~~ plan shall provide coverage for inpatient hospital services for the  
18 treatment of conditions under par. (a) 1. ~~as provided in subd. 2.~~

19          **SECTION 24.** 632.89 (2) (c) 2. of the statutes is repealed.

20          **SECTION 25.** 632.89 (2) (d) 1. of the statutes is renumbered 632.89 (2) (d) and  
21 amended to read:

22          632.89 (2) (d) ~~Minimum coverage~~ Coverage of outpatient services. If a group ~~or~~  
23 ~~blanket disability insurance policy issued by an insurer~~ health benefit plan or a  
24 self-insured health plan provides coverage of any outpatient treatment, the ~~policy~~

1 plan shall provide coverage for outpatient services for the treatment of conditions  
2 under par. (a) 1. ~~as provided in subd. 2.~~

3 **SECTION 26.** 632.89 (2) (d) 2. of the statutes is repealed.

4 **SECTION 27.** 632.89 (2) (dm) 1. of the statutes is renumbered 632.89 (2) (dm)  
5 and amended to read:

6 632.89 (2) (dm) ~~Minimum coverage~~ Coverage of transitional treatment  
7 arrangements. If a group or blanket disability insurance policy issued by an insurer  
8 health benefit plan or a self-insured health plan provides coverage of any inpatient  
9 hospital treatment or any outpatient treatment, the ~~policy~~ plan shall provide  
10 coverage for transitional treatment arrangements for the treatment of conditions  
11 under par. (a) 1. ~~as provided in subd. 2.~~

12 **SECTION 28.** 632.89 (2) (dm) 2. of the statutes is repealed.

13 **SECTION 29.** 632.89 (2) (e) of the statutes is renumbered 632.89 (5) (b) and  
14 amended to read:

15 632.89 (5) (b) ~~Exclusion~~ Certain health care plans. This subsection ~~section~~ does  
16 not apply to a health care plan offered by a limited service health organization, as  
17 defined in s. 609.01 (3), or by a preferred provider plan, as defined in s. 609.01 (4),  
18 that is not a defined network plan, as defined in s. 609.01 (1b).

19 **SECTION 30.** 632.89 (2m) of the statutes is renumbered 632.89 (4m).

20 **SECTION 31.** 632.89 (3) of the statutes is created to read:

21 632.89 (3) LIMITATIONS. For a group health benefit plan and a self-insured  
22 health plan that provide coverage of the treatment of nervous and mental disorders  
23 and alcoholism and other drug abuse problems, and for an individual health benefit  
24 plan that provides coverage of the treatment of nervous and mental disorders or  
25 alcoholism and other drug abuse problems, the exclusions and limitations;



1 deductibles; copayments; coinsurance; annual and lifetime payment limitations;  
2 out-of-pocket limits; out-of-network charges; day, visit, or appointment limits;  
3 limitations regarding referrals to nonphysician providers and treatment programs;  
4 and duration or frequency of coverage limits under the plan may be no more  
5 restrictive for coverage of the treatment of nervous and mental disorders or  
6 alcoholism and other drug abuse problems than the most common or frequent type  
7 of treatment limitations applied to substantially all other coverage under the plan.  
8 The plan shall include in any overall deductible amount or annual or lifetime limit  
9 or out-of-pocket limit for the plan, expenses incurred for the treatment of nervous  
10 and mental disorders or alcoholism and other drug abuse problems.

11 **SECTION 32.** 632.89 (3c) of the statutes is created to read:

12 **632.89 (3c) EXEMPTION FOR COST INCREASE.** (a) Notwithstanding sub. (3), an  
13 employer that provides health care coverage for its employees through a group  
14 health benefit plan or a self-insured health plan that provides coverage of the  
15 treatment of nervous and mental disorders and alcoholism and other drug abuse  
16 problems may elect for the employer's plan to be exempt from the requirements  
17 under sub. (3) during the plan year following any plan year in which, as a result of  
18 the requirements under sub. (3), there is an increase under the plan in the employer's  
19 total cost of coverage for the treatment of physical conditions and nervous and  
20 mental disorders and alcoholism and other drug abuse problems by a percentage that  
21 exceeds either of the following:

- 22 1. Two percent in the first plan year in which the requirements apply.
- 23 2. One percent in any plan year after the first plan year in which the  
24 requirements apply.

1 (b) A cost increase specified under par. (a) may not be determined until the  
2 employer's group health benefit plan or self-insured health plan has complied with  
3 the requirements under sub. (3) for at least the first 6 months of the plan year for  
4 which the increase is to be determined. The cost increase shall be determined, and  
5 certified, by a qualified actuary, as defined in s. 623.06 (1c). A copy of the actuary's  
6 determination, and all underlying documentation that the actuary relied on in  
7 making the determination, shall be filed with and, in accordance with rules  
8 promulgated by the commissioner, retained by the insurer issuing the group health  
9 benefit plan or by the self-insured health plan.

10 (c) A group health benefit plan or a self-insured health plan that qualifies for  
11 an exemption under par. (a) and for which the employer providing coverage under  
12 the plan has elected for the plan to be exempt from the requirements under sub. (3)  
13 during a plan year shall promptly notify all enrollees under the plan.

14 (d) Regardless of a cost increase as specified in par. (a), an employer may elect  
15 for the employer's plan to continue to be subject to the requirements under sub. (3).  
16 If an employer elects for the employer's plan to be exempt from the requirements  
17 under sub. (3), during the plan year in which it is exempt the group health benefit  
18 plan or self-insured health plan shall comply with the coverage requirements under  
19 s. 632.89 (2) (a) to (dm), 2007 stats.

20 **SECTION 33.** 632.89 (3f) of the statutes is created to read:

21 **632.89 (3f) EXEMPTION FOR SMALL EMPLOYERS.** (a) Notwithstanding sub. (3), an  
22 employer that provides health care coverage for its employees through a group  
23 health benefit plan that provides coverage of the treatment of nervous and mental  
24 disorders and alcoholism and other drug abuse problems may elect for the employer's  
25 plan to be exempt from the requirements under sub. (3) during a plan year if, on the

1 first day of the plan year, the employer will have fewer than 10 eligible employees,  
2 as defined in s. 632.745 (5).

3 (b) A group health benefit plan that qualifies for an exemption under par. (a)  
4 and for which the employer providing coverage under the plan has elected for the  
5 plan to be exempt from the requirements under sub. (3) during a plan year shall  
6 promptly notify all enrollees under the employer's plan. During the plan year in  
7 which it is exempt from the requirements under sub. (3), the group health benefit  
8 plan shall comply with the coverage requirements under s. 632.89 (2) (a) to (dm),  
9 2007 stats.

10 **SECTION 34.** 632.89 (3m) of the statutes is repealed.

11 **SECTION 35.** 632.89 (3p) of the statutes is created to read:

12 **632.89 (3p) AVAILABILITY OF PLAN INFORMATION.** A group health benefit plan and  
13 a self-insured health plan that provide coverage of the treatment of nervous and  
14 mental disorders and alcoholism and other drug abuse problems, and an individual  
15 health benefit plan that provides coverage of the treatment of nervous and mental  
16 disorders or alcoholism and other drug abuse problems, shall, upon request, make  
17 available to any current or potential insured, participant, beneficiary, or contracting  
18 provider the criteria for determining medical necessity under the plan with respect  
19 to that coverage. If a group health benefit plan or a self-insured health plan that  
20 provides coverage of the treatment of nervous and mental disorders and alcoholism  
21 and other drug abuse problems denies any particular insured, participant, or  
22 beneficiary coverage for services for that treatment, or if an individual health benefit  
23 plan that provides coverage of the treatment of nervous and mental disorders or  
24 alcoholism and other drug abuse problems denies any particular insured coverage  
25 for services for that treatment, the plan shall, upon request, make the reason for the

1 denial available to the insured, participant, or beneficiary, in addition to complying  
2 with s. 632.857, if applicable.

3 **SECTION 36.** 632.89 (4) (title) of the statutes is repealed and recreated to read:

4 632.89 (4) (title) RULES.

5 **SECTION 37.** 632.89 (4) of the statutes is renumbered 632.89 (4) (a).

6 **SECTION 38.** 632.89 (4) (b) of the statutes is created to read:

7 632.89 (4) (b) 1. The commissioner shall promulgate rules for the  
8 administration of this section, including rules that specify the information that must  
9 be provided in the notices under subs. (3c) (c) and (3f) (b) and the manner in which  
10 the notices must be given, that specify who is responsible for the actuarial study and  
11 determination under sub. (3c) (b), and that specify retention requirements for the  
12 determination and underlying documentation. In promulgating the rules, the  
13 commissioner shall follow, as a minimum standard, any relevant federal regulations  
14 or guidelines that are in effect.

15 2. Using the procedure under s. 227.24, the commissioner may promulgate the  
16 rules under subd. 1. for the period before the effective date of any permanent rules  
17 promulgated under subd. 1., but not to exceed the period authorized under s. 227.24  
18 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the commissioner  
19 is not required to provide evidence that promulgating a rule under this subdivision  
20 as an emergency rule is necessary for the preservation of the public peace, health,  
21 safety, or welfare and is not required to make a finding of emergency for a rule  
22 promulgated under this subdivision.

23 **SECTION 39.** 632.89 (5) (title) of the statutes is repealed and recreated to read:

24 632.89 (5) (title) EXCLUSIONS.

25 **SECTION 40.** 632.89 (5) of the statutes is renumbered 632.89 (5) (a).

1           **SECTION 41.** 632.89 (5) (a) (title) of the statutes is created to read:

2           632.89 (5) (a) (title) *Medicare*.

3           **SECTION 42.** 632.89 (5) (c) of the statutes is created to read:

4           632.89 (5) (c) *Coverage of autism treatment*. This section does not apply to  
5 coverage of treatment for autism spectrum disorder, as defined in s. 632.895 (12m)  
6 (a) 1., to which s. 632.895 (12m) applies.

7           **SECTION 43.** 632.89 (6) of the statutes is repealed.

8           **SECTION 44.** 632.89 (7) of the statutes is repealed.

9           **SECTION 45. Initial applicability.**

10          (1) This act first applies to all of the following:

11          (a) Except as provided in paragraphs (b) and (c), health benefit plans that are  
12 issued or renewed, and governmental self-insured health plans that are established,  
13 extended, modified, or renewed, on the effective date of this paragraph.

14          (b) Health benefit plans covering employees who are affected by a collective  
15 bargaining agreement containing provisions inconsistent with this act that are  
16 issued or renewed on the earlier of the following:

17           1. The day on which the collective bargaining agreement expires.

18           2. The day on which the collective bargaining agreement is extended, modified,  
19 or renewed.

20          (c) Governmental self-insured health plans covering employees who are  
21 affected by a collective bargaining agreement containing provisions inconsistent  
22 with this act that are established, extended, modified, or renewed on the earlier of  
23 the following:

24           1. The day on which the collective bargaining agreement expires.

