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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Senate

(Assembly, Senate or Joint)

### Committee on ... Health, Health Insurance, Privacy, Property Tax Relief, and Revenue (SC-HHIPTRR)

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

## Senate

### Record of Committee Proceedings

#### **Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue**

##### **Senate Bill 483**

Relating to: prohibiting health insurance policies and self-insured health plans from excluding coverage for injuries based on the use of alcohol or controlled substances.

By Senators Jauch, Sullivan, Carpenter, Erpenbach, Taylor and Schultz; cosponsored by Representatives Pasch, Grigsby, Roys, Zepnick, Berceau, Dexter, Young and Hubler.

January 25, 2010      Referred to Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue.

February 24, 2010      **PUBLIC HEARING HELD**

Present:      (7)      Senators Erpenbach, Carpenter, Robson, Lassa, Lazich, Kanavas and Darling.

Absent:      (0)      None.

##### Appearances For

- Lisa Maroney — UW Health and AWARE
- Jeremy Levin — RWHC
- Howard Croft — Dr., WI Chapter of American College of Emergency Physicians
- Charles Ries, Milwaukee
- Steve Hargaren — Dr., Medical College of Wisconsin
- Bob Jauch — Sen.

##### Appearances Against

- None.

##### Appearances for Information Only

- None.

##### Registrations For

- Paul Merline — WI Hospital Association
- Mark Grapentine — WI Medical Society
- Kathy Kuhn — Medical College of WI

##### Registrations Against

- None.

Registrations for Information Only

- None.

March 3, 2010

**EXECUTIVE SESSION HELD**

Present: (7) Senators Erpenbach, Carpenter, Robson, Lassa, Lazich, Kanavas and Darling.

Absent: (0) None.

Moved by Senator Robson, seconded by Senator Carpenter that **Senate Bill 483** be recommended for passage.

Ayes: (4) Senators Erpenbach, Carpenter, Robson and Lassa.

Noes: (3) Senators Lazich, Kanavas and Darling.

PASSAGE RECOMMENDED, Ayes 4, Noes 3

Kelly Becker  
Committee Clerk







# Wisconsin Chapter American College of Emergency Physicians

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February 24, 2010

**Committee on Health, Health Insurance, Privacy,  
Property Tax Relief and Revenue  
Wisconsin State Senate**

**SB 483 - Health Insurance Exclusions based on  
use of alcohol or controlled substances**

*Testimony of Howard J. Croft, MD  
Wisconsin Chapter - American College of Emergency Physicians*

Mr. Chairman and members of the committee, thank you for taking the time to consider SB 483, a bill that will assure a basic level of fairness in the health insurance system of our state.

My name is Dr. Howard Croft. I am an emergency physician practicing at Columbia St. Mary's Hospital in Milwaukee, and I appear on behalf of the Wisconsin Chapter-American College of Emergency Physicians and our more than 400 members who take care of sick and injured patients throughout the state. Emergency physicians form the backbone of our healthcare safety net. We provide a wide range of medical services to Wisconsin citizens with conditions ranging from life-threatening emergencies to minor medical treatment. The federal EMTALA law requires hospitals and emergency department doctors to treat all patients who enter the E.R. regardless of their ability to pay or their insurance status. This is the correct and moral public policy.

Wisconsin law currently allows health insurance companies to deny coverage or payment of a claim if a patient is under the influence of alcohol or drugs. The purpose of SB 483 is simple. It assures that when a service would otherwise be covered under an insurance company's policy, then the claim will be paid even if the patient is under the influence of alcohol or drugs. When insurance companies deny payment of claims in these circumstances, it usually means that the treating doctor absorbs the cost of treatment which he/she is legally required by federal law to provide; or at the very least, puts the doctor in the position of becoming a collection agent for the insurance company.

Thirteen other states and the District of Columbia have passed laws prohibiting insurance companies from using "intoxication exclusions." The legislature in our neighboring state of Illinois, for example, unanimously passed this bill in 2007.

### ***Background Information***

More than 60 years ago in 1947, the National Association of Insurance Commissioners (NAIC) adopted the Uniform Accident and Sickness Policy Provision Law, allowing insurance carriers to deny health insurance coverage to people injured while under the influence of drugs or alcohol. This legislation was intended to keep insurance costs low by limiting payouts and to reduce drunk driving by forcing impaired drivers to pay their own medical costs. Forty-two states and the District of Columbia enacted similar legislation.

However, in 2001, the National Conference of Insurance Legislators (NCOIL) passed a resolution that supported repeal of these outdated "intoxication exclusion laws" across the country. Currently, 13 states and the District of Columbia prohibit insurance carriers from using intoxication exclusions: Connecticut, Colorado, Illinois, Indiana, Iowa, Maine, Maryland, Nevada, North Carolina, Oregon, Rhode Island, South Dakota, and Washington. Although Wisconsin statutes do not explicitly permit intoxication exclusions, the lack of a law prohibiting them creates a loophole that allows insurance companies to write policies that can exclude coverage for injuries suffered while under the influence of drugs or alcohol.

### ***Unintended Consequences***

Emergency physicians treat all patients, regardless of their ability to pay. The federal EMTALA law mandates that insurance status, type of insurance, or financial means may not be used to withhold needed emergency medical services. Therefore, in Wisconsin, when insurance carriers deny coverage for injuries suffered while under the influence, the costs of medical treatment are passed on directly to the emergency physician who treats the patient. This is a gross injustice which forces emergency physicians to bear a significant share of the cost of providing care to these patients.

In addition, while intoxicated exclusion laws originally were intended to discourage excessive alcohol and drug use, they actually have allowed alcohol and drug abusers to avoid detection. Because intoxication exclusions allow insurers to deny coverage for injuries suffered while under the influence, many medical providers may be reluctant to document alcohol or drug use in the patient's medical record. This limits the number of patients who receive counseling in emergency departments and fails to identify individuals who may have substance abuse problems.

According to a 2008 study by The George Washington University Medical Center, on average more than 335 people in Wisconsin lose their lives in alcohol-related vehicle crashes each year. While alcohol exclusions are intended to reduce drunk driving by forcing impaired drivers to pay their own medical costs when there is a crash, the study points out these exclusions have *not* reduced insurance payouts. As the report states:

"In states that allow exclusions, trauma surgeons have decided not to measure blood alcohol and avoid documenting alcohol use in the medical record. Without documentation of alcohol use, an insurance company has no basis to deny payment. Because almost 50 percent of trauma patients are under the influence of alcohol, documenting intoxication could trigger enough payment denials to affect the financial stability of the hospital."

### ***What Opponents Will Say***

"Not a problem in Wisconsin" – Insurance companies and their spokespersons will say that this just isn't an issue in Wisconsin, that there aren't any denials for this reason. *If that were true*, then this bill would have no impact on them. However, denials do happen all the time. For example, we have a case in my own emergency department at Columbia St. Mary's Hospital in Milwaukee in which a 19 year-old male was brought in by paramedics. He had been handcuffed by police, was agitated and combative. This young man was extremely intoxicated from alcohol, had a very high heart rate and after several hours in the emergency department under the care of myself and a colleague, the patient eventually was admitted to the ICU. A subsequent letter from the insurance company said: "*Based on the information provided in your medical records, including but not limited to the diagnoses, charges incurred for treatment beginning <DATE OMITTED FOR PRIVACY REASONS> were incurred in consequence of your being intoxicated. Therefore, these expenses are not eligible under the contract.*"

“This is just another mandate” – Not true! This bill does not require an insurance company to cover medical care that the policy doesn’t already include. It merely says that if care would be covered except for the patient’s intoxication, then the insurance claim must be paid.

“This issue should be solved at the federal level” – Whether Congress will be able to enact any form of health care reform certainly is an open question. However, intoxication exclusions are a real problem here and now, and the Wisconsin legislature has the ability to join 13 other states in fixing it for Wisconsin citizens and the doctors who care for them.

“This bill is unfair to the insurance companies by making them uncompetitive with self-funded plans” – This silly argument presupposes that people shop for health insurance based on whether they will have coverage if they are injured when they’re drunk or high on dope. Plus, most people don’t even have the luxury of shopping for insurance because of numerous other factors such as employment, pre-existing conditions or cost. What’s unfair is expecting an emergency physician who’s required by federal law to treat all patients to absorb the cost of an intoxicated patient’s care, even when that patient has health insurance.

### *In Summary*

This bill does not create a new mandate for care. It only says that an insurance company must pay doctors and hospitals for the services they *already* cover.

Claims are being denied in Wisconsin now when the patient is found to be intoxicated. This leaves the doctor and hospital to absorb the cost of care or to become the collection agent for the insurance company.

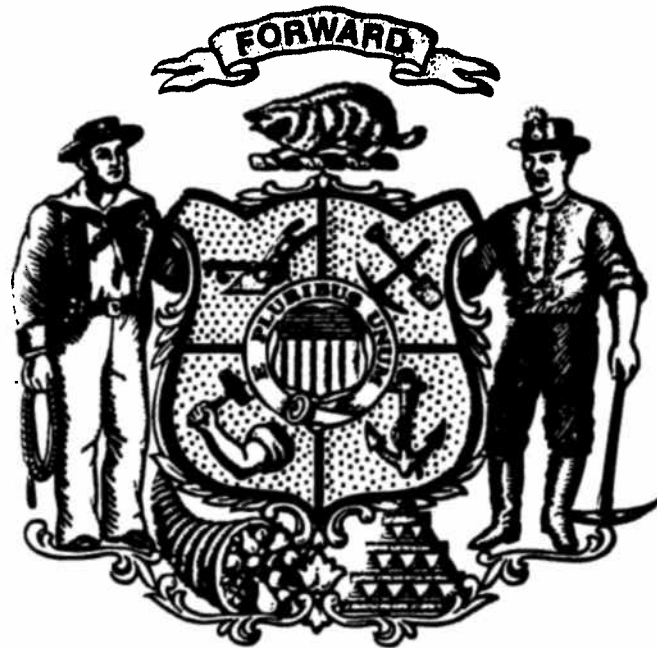
There is strong support for prohibiting intoxication exclusions. Thirteen other states already have passed prohibitions, and these proposals are supported by the National Association of Insurance Commissioners, the National Conference of Insurance Legislators, the American Medical Association, Mothers Against Drunk Driving, the National Commission Against Drunk Driving, the American College of Emergency Physicians, the American Public Health Association, the American Bar Association and the American College of Surgeons.

Under the federal EMTALA law, emergency physicians and hospital emergency departments cannot turn away patients regardless of their ability to pay the bill or insurance status. This leaves those providing emergency medical care especially vulnerable to intoxication exclusions and denial of payment, possibly putting their financial viability in question and potentially jeopardizing the availability of emergency care for the entire community.

Finally, this is an issue of basic fairness. The emergency physician on duty in an E.R. is there to take care of the patient and treat their medical needs. They should not be expected to provide this care for free simply because the insurance company doesn’t want to pay if their customer is drunk or high on drugs. We urge this committee to approve SB 483 which will help to maintain the health care safety net for all Wisconsin citizens and communities.

Thank you for your consideration.







# Wisconsin Medical Society

Your Doctor. Your Health.

TO: Senate Committee on Health, Health Insurance, Privacy, Property Tax Relief and Revenue  
Senator Jon Erpenbach, Chair

FROM: Mark Grapentine, JD – Senior Vice President, Government Relations

DATE: February 24, 2010

RE: **Support** for Senate Bill 483 – Health Insurance Coverage

On behalf of nearly 12,500 members statewide, the Wisconsin Medical Society thanks you for this opportunity to share our support for Senate Bill 483, relating to prohibiting the nefarious practice of denying health insurance coverage when a patient's injuries are related to alcohol or other drug use.

The Society has policy in this area directly on point:

#### **INS-040**

**Legislative Action to Prevent Implementation of Antiquated Provisions of the "Uniform Policy Provision Law":** The Wisconsin Medical Society (Society) opposes health insurers from selling policies in Wisconsin that include contract language that would deny insurance payments for the treatment of injuries sustained as a consequence of the insured person being intoxicated due to alcohol or under the influence of controlled substances.

The Society supports use of blood, breath and/or urine alcohol tests in the emergency department setting only to assist in appropriate medical diagnosis, especially in cases in which an individual has incurred an injury. (BOD, 0709)

The American Medical Association also has policy on point:

#### **D-185.993 Advocacy for Repeal of the Uniform Individual Accident and Sickness Policy Provision Law (UPPL)**

Our AMA will support state and specialty medical societies and the public health associations in their efforts to secure repeal of laws and state insurance codes which allow for the denial of insurance payments for the treatment of injuries sustained as a consequence of the insured person being intoxicated due to alcohol or under the influence of narcotics. (Res. 912, I-03; Reaffirmed: CSAPH Rep. 8, A-06)

It is worth pointing out that in its Fiscal Estimate for SB 483, Employee Trust Funds (ETF) believes the bill will have no fiscal effect on the state, as the state's current health plans do not exclude coverage in this area. ETF's example should be the standard: denying coverage in this way is poor public policy.

If you have any questions about this or other health care issues, please contact us at any time.





TO: Members, Senate Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue  
Senator Jon Erpenbach, Chairperson

FROM: Jeremy Levin, Director of Advocacy  
Rural Wisconsin Health Cooperative

DATE: February 24, 2010

RE: **SUPPORT** Senate Bill 483 – Prohibition on excluding health insurance coverage for injuries based on the use of alcohol or controlled substances.

On behalf of our thirty-five member rural hospitals, who take pride in serving their communities, the Rural Wisconsin Health Cooperative (RWHC) wants to state our support for Senate Bill 483, prohibiting health insurance policies and self-insured health plans from excluding coverage for injuries based on the use of alcohol or controlled substances.

RWHC believes that Wisconsin should join the ever-increasing number of states that prohibit insurers from denying health care coverage and reimbursement for care received by the patient, if he or she is intoxicated or impaired, or the injury is the result of using alcohol or controlled substances. Regardless of the state in which a patient might present to a hospital's emergency room or urgent care facility, that patient will receive the appropriate care. RWHC believes that the physician and the hospital should have any claims paid because care will be appropriately given and timely.

It is a difficult task to get an exact number of occurrences where claims have been denied because of a patient's impaired state, there are confidentiality concerns for both the patient and the hospital, and often this care will be written-off as charity care or bad debt for the patient. However, an informal poll of our member hospitals' CEOs found occurrences of coverage denial with both private and self-insured health plans.

RWHC members report that the hard economic times have taken their toll on their facilities, with charity care and bad debt increasing, resulting in services and jobs having to be cut or scaled back. In 2008, half of the state's Critical Access Hospitals (all of whom operate in rural areas) reported operating margins that were either barely positive or in the red. Any legislation that can guarantee payment for care received by a patient, who has health insurance coverage and has continually paid for their health insurance coverage, is a responsible regulation to enact. Impaired patients with health insurance should not have their coverage denied; claims go unpaid or need to rely on charity care, because charity care should be reserved for those patients without any health care coverage.

Wisconsin's rural hospitals are strongly committed to improving patient safety as we provide quality and patient-centered care. The RWHC asks the committee members to **SUPPORT** Senate Bill 483.





**TO: SENATE HEALTH, HEALTH INSURANCE, PRIVACY,  
PROPERTY TAX AND REVENUE COMMITTEE**

**FROM: LISA MARONEY, UW HEALTH & AWARE (608)206-5829**

**DATE: FEBRUARY 24, 2010**

**RE: SUPPORT SB 483**

**When health plans deny claims resulting from a patient who has been injured as a result of being under the influence of alcohol or drugs, we all end up paying for the services provided either through increased premiums or the loss of precious charity care dollars.**

**SB 483 corrects this problem by prohibiting health plans from deny coverage to individuals injured as a result of being under the influence.**

**At UW Health and with conversations between AWARE members we know this problem occurs. It is not a widespread issue but nonetheless it does happen and quite frankly it just isn't right.**

**Some may argue this is another mandate. It's not. It simply states that the same medical care provided under the policy needs to be provided if a patient is intoxicated. I think many of us would be outraged if health plans denied coverage to individuals who have diabetes or epilepsy and failed to take their medications. This is just a simple issue of fairness for those that have health care coverage.**

**In 2001 the National Association of Insurance Commissioners (NAIC) reversed their previous 1947 position and recommended model language for states to adopt that bars health plans from denying coverage to patients whose injuries are alcohol related. Since that time, 15 states have adopted such laws and we encourage you to make Wisconsin the next state.**

**AWARE has over 60 different health, law enforcement, community, education and health plans members. This legislation is one of the cornerstones of the AWARE legislative agenda.**

**Thank you.**

**AWARE Coalition Members**

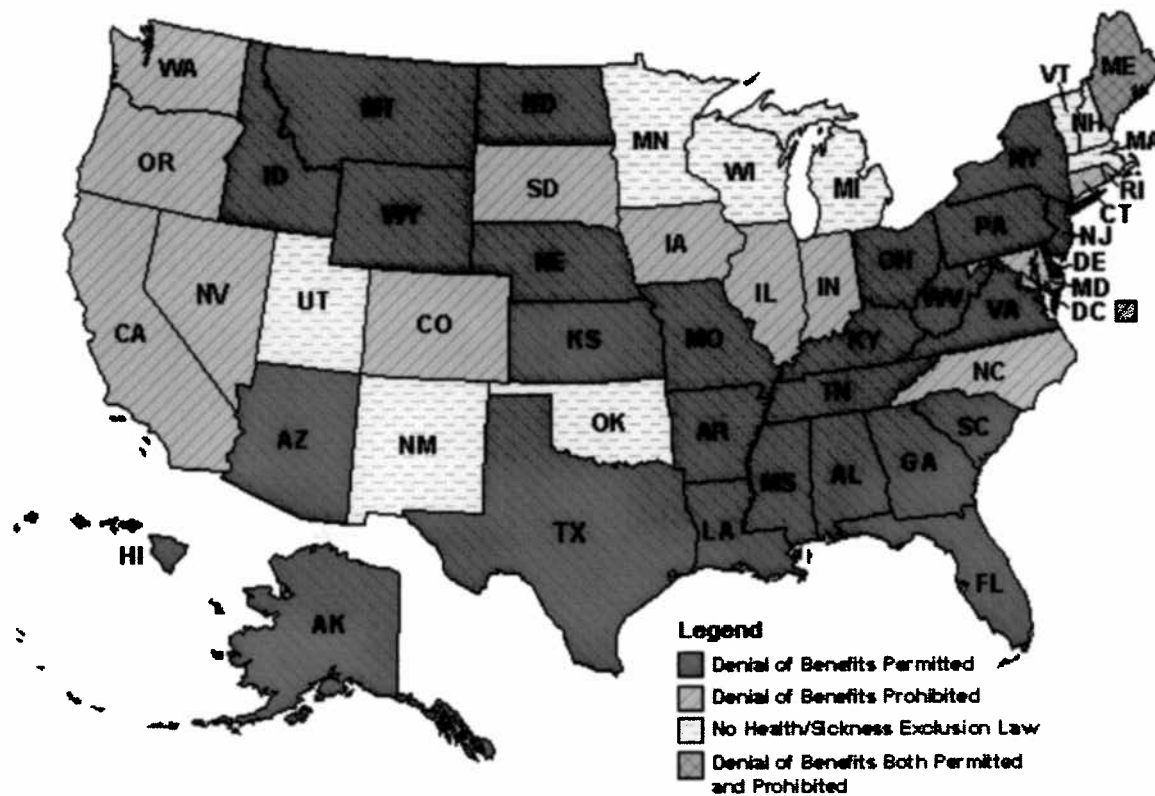
Affinity Health System  
Aurora Health Care  
Bay Area Community Council  
Beloit Memorial Hospital  
BRAVO is Building Responsible Alcohol Values and Options  
Children's Hospital and Health System  
Columbia County Connects  
Dane County  
Dane County Medical Society  
Edgerton Coalition for a Health Community  
Focus on Community, Racine  
Froedtert & Community Health  
Gundersen Lutheran  
Healthy Sheboygan Co. 2020 AODA Comm.  
KEYS is Keeping Everyone You Know Safe  
La Crosse County Board of Supervisors  
Madison Mayor's Office  
Marathon Cty. Alcohol & Other Drugs Partnership Council  
Marathon County Health Department  
Marshfield Clinic  
Medical College of Wisconsin  
Medical Students for Legislative Action  
Meriter Health Services  
Milwaukee Deputy Sheriffs Association  
Ministry Health Care  
Mothers Against Drunk Driving  
Ntl. Assoc. of Alcoholism & Drug Abuse Counselors  
Reedsburg Area Medical Center  
Resource Center on Impaired Driving  
Rock County Partners in Prevention  
Rock County Youth2Youth  
Rogers Behavioral Health System  
Rural Wisconsin Health Cooperative  
St. Croix Valley Restorative Justice Program  
St. Joseph's Community Health Services, Hillsboro  
Southern Alliance Regional Council (SARC)  
Tobacco & Drug Free Communities of Winnebago County Coalition  
Unity Health Insurance  
UW Health  
Vernon County Partnership Council  
Watertown Parent Advisory on Underage Drinking  
WI Alcohol & Drug Treatment Providers Assoc.  
WI Assoc. of Local Health Departments and Boards  
WI Assoc. on Alcohol & Other Drug Abuse  
WI Assoc. of Alcoholism & Drug Abuse Counselors  
WI Chapter of the American College of Emergency Physc.  
WI County Police Association  
WI District Attorneys Association  
WI Hospital Association  
WI Medical Society  
WI Nurses Association  
WI Prevention Network  
WI Public Health Association  
WI Public Health Council  
WI Sheriffs & Deputy Sheriffs Association  
WI State Laboratory of Hygiene  
WPS Health Insurance

# Alcohol Policy Information System

A project of the National Institute on Alcohol Abuse and Alcoholism

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## Insurers' Liability for Health/Sickness Losses Due to Intoxication ("UPPL") as of January 1, 2009



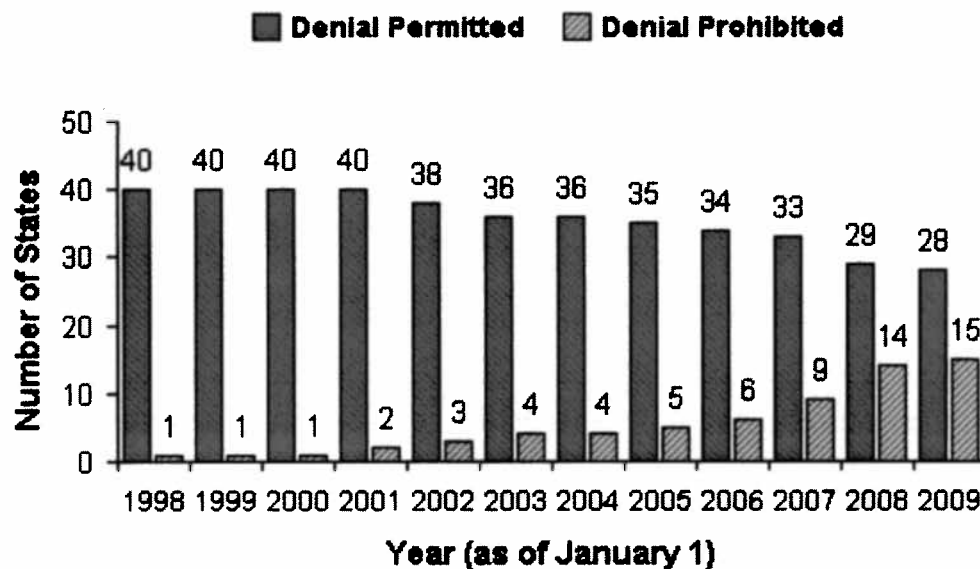
National Institute on Alcohol Abuse and Alcoholism - National Institutes of Health - Department of Health and Human Services

# Alcohol Policy Information System

A project of the National Institute on Alcohol Abuse and Alcoholism

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## Distribution of Insurers' Liability for Health/Sickness Losses Due to Intoxication ("UPPL"), January 1, 1998 through January 1, 2009



National Institute on Alcohol Abuse and Alcoholism - National Institutes of Health - Department of Health and Human Services





# Wisconsin Association of Health Plans

DATE: February 24, 2010

TO: Members, Senate Committee on Health, Health Insurance, Privacy, Property Tax Relief and Revenue

RE: SB 483 – Prohibiting Health Insurance Policies from Excluding Coverage for Injuries Based on the Use of Alcohol or Controlled Substances

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The Wisconsin Association of Health Plans would like to bring to Committee members' attention a number of concerns with, and potential unforeseen consequences relating to, Senate Bill 483.

**Association member commercial health plans, which are regulated by the state government, DO NOT currently exclude or deny coverage if an individual is injured as a result of the use of alcohol or controlled substances.**

To date, the examples of coverage exclusions presented to support Senate Bill 483 are related to self-funded plans. As Committee members are probably aware, self-funded plans are not under the jurisdiction of state law.

This means that state coverage mandates – such as the autism or cochlear implant coverage mandates that were signed into law in 2009 – do not have to be included in the benefits package offered by self-funded plans. Furthermore, the consumer protection measures that exist for the commercial health insurance market in Wisconsin do not impact self-funded plans.

Over the past decade there has been a dramatic shift in Wisconsin's health care market from commercial to self-funded plans. In 1998 almost 42% of the insured population was in the commercial insurance market; by 2008 that number had dropped to 28% while 35% of the insured population was in the self-funded market in 2008. As the market has shifted away from commercial insurance to self-funded, the health care coverage of more and more Wisconsin residents is outside the jurisdiction of state law.

The increasing number of coverage mandates that continue to be added to the commercial market are a key reason for the shift from commercial to self-funded coverage.

**Senate Bill 483 will not only fail to address the problem of emergency room physicians not receiving payment for services provided, but it will further exacerbate the disparity between the commercial market and the self-funded market and provide one more reason for businesses to self-fund.**

In order to truly address the issue of health insurance policies excluding coverage for injuries based on the use of alcohol or controlled substances, the federal government needs to pass legislation preventing this practice from occurring and ensuring that all health plans, whether in the commercial or self-funded market, are impacted equally.

The Wisconsin Association of Health Plans encourages Committee members to consider the negative consequences that Senate Bill 483 will have on Wisconsin's health insurance marketplace and find an alternative means to address the concerns of emergency room physicians.