

How California Repealed UPPL

It took seven years and two prior vetoed bills before Governor Schwarzenegger signed the repeal of UPPL into law on September 30, 2008. Eric Goplerud, director of Ensuring Solutions, responded by saying “This is the most important repeal of UPPL so far. California represents 20 percent of the population. We could very well be at a tipping point where insurers will give up their attachment to an ineffective and outmoded practice.”

What were the steps in California that brought success? It began with understanding the Governor’s veto message in 2005 when he cited opposition to all mandates. Clearly, any further effort to repeal UPPL had to be couched in terms that specifically avoided mandating that insurance pay for any services they do not agree to; and every opportunity to educate the governor’s staff and administration that repeal of UPPL does not constitute a mandate had to be undertaken.

When the Governor’s Prevention Advisory Council (GPAC) developed a subcommittee on Screening, Brief Intervention and Referral to Treatment (SBIRT), the California Society of Addiction Medicine accepted the invitation to appoint a member, its President-Elect, Timmen Cermak, M.D. Dr. Cermak volunteered to co-chair the committee with the deputy director of the California Department of Alcohol and Drug Programs (ADP), Michael Cunningham. He then introduced a resolution to the subcommittee calling for the repeal of UPPL.

At this point it was extremely useful to introduce the January 16, 2008 Briefing Paper on *Screening and Brief Intervention* produced by the current White House Office of National Drug Control Policy (ONDCP). This report concluded that SBIRT “should be a routine part of primary care medical care.” However, the ONDCP report cites insurance statutes, such as UPPL, as having “**the direct effect of discouraging screening trauma patients for alcohol and other drug problems, since a positive screen may lead to**

denial of coverage for the needed care.” This firmly made the argument for our committee that, if we were to promote SBIRT services within California (which the Governor’s own Prevention Advisory Council had given us the mission to do), then getting rid of a law that created a major barrier was necessary to promote that goal.

The resolution to repeal UPPL was passed by the subcommittee, then by the full GPAC and sent on to ADP and the administration. Dr. Cermak wrote a briefing paper on UPPL repeal that was funneled through an administration staff member on the SBIRT subcommittee to the governor’s staff. The following language was used to explain why repeal of UPPL would not create a mandate:

UPPL creates a statutory right for insurance companies to deny payment for medical expenses incurred as a result of alcohol or other drug use. By establishing this right on a statutory basis, insurance companies are relieved from the burden of having to negotiate this clause up front in contracting with potential customers. The effect is that customers are less likely to be aware that their medical insurance covers alcohol or drug related medical expenses only at the discretion of their insurance company. If UPPL were designed to discourage alcohol and drug use with optimal effectiveness, one would expect that its exclusions would be prominently displayed in the initial contracting procedure.

Repeal of UPPL does not force, or mandate, payment for conditions or injuries caused by alcohol or other drugs. Insurance companies remain free to negotiate this exclusion in the initial contracting process. In fact, insurance companies will be required to negotiate this exclusion openly and up front, if they choose.

In parallel with creating the above resolution to repeal UPPL, Dr. Cermak and CSAM worked with California State Assemblyman Paul Krekorian (Glendale) to introduce AB 1461. We ran the language of the UPPL repeal bill past Eric Gopelrud to assure that it took advantage of the experience of other states that have successfully repealed alcohol exclusion laws. By keeping our language consistent with other states, two goals were accomplished. First, we felt we were contributing to building more of a national consensus. And second, it provided additional assurance to our own state’s legislative analysts that the language would hold up to any challenges.

The timing worked out well, permitting the bill to arrive on the Governor's desk shortly after the resolution and Dr. Cermak's briefing paper had circulated. The focus had been put on promoting SBIRT. And the myth of creating a mandate had been dispelled.