

## **PROPOSED ORDER OF DEPARTMENT OF HEALTH AND FAMILY SERVICES TO ADOPT RULES**

The Wisconsin Department of Health and Family Services proposes to **repeal and recreate** ch. HFS 62 and HFS 75.02 (7) and (34); **create** HFS 75.02 (1m) and (33m), 75.13 (2m) and 75.16; and **amend** HFS 75.01 (2), 75.02 (82), and 75.03 (1), Table and (title), and (2), relating to assessment and services for drivers with alcohol or controlled substance problems, and affecting small businesses.

### **SUMMARY OF PROPOSED RULE**

**Statutes interpreted:** Sections 46.973 (2) (c), 51.42, 51.45, 340.01 (23v), 343.30 (1q) (c) and (d) and 343.305 (10) (c) and (d), Stats.

**Statutory authority:** Sections 51.42 (7) (b), 51.45 (8) (a) and (9), 343.30 (1q) (c) 2., and 343.305 (10) (c) 2., Stats.

#### **Explanation of agency authority:**

Sections 343.30 (1q) (c) 2. and 343.305 (10) (c) 2. , Stats., requires the Department to establish standards, including conflict of interest guidelines, for intoxicated driver assessments and driver safety plans by rule. These standards are set forth in ch. HFS 62, relating to intoxicated driver assessments and driver safety plans.

Section 51.45 (8) (a), Stats., require the Department to establish minimum standards for community alcohol and other drug abuse treatment facilities. Section 51.45 (9), Stats., require the Department to promulgate rules for acceptance of persons into treatment programs, considering available treatment resources, for the purpose of early and effective treatment of alcoholics and intoxicated persons. These standards are set forth in ch. HFS 75, relating to community substance abuse service standards.

**Related statutes or rules:** Chs. Trans 106 and 107, ch. 51, Stats., and ss. 343.30 and 343.305, Stats. Chapters HFS 75 and 62 are related.

#### **Plain language analysis:**

Pursuant to ss. 343.30 (1q) (c) 2. and 343.305 (10) (c) 2. , Stats., ch. HFS 62 provides uniform procedures for intoxicated driver assessment and driver safety plan programs to serve the approximately 35,000 individuals who are ordered by a court or the Department of Transportation to undergo alcohol and other drug abuse assessment and complete a driver safety plan. Chapter HFS 62 has not been substantially revised for over 21 years. Over the years the Department has issued interim policy memos to assessment facilities and driver safety plan providers to accommodate changes in practice and interpretations needed to ensure uniformity and quality of care. The Department proposes to incorporate these policy memos, eliminate outdated and overly prescriptive rule provisions, and update the rules to be consistent with current statutes affecting intoxicated drivers and the agencies serving them.

In addition to proposing the changes to ch. HFS 62, the Department proposes to revise ch. HFS 75, rules relating to certification of community substance abuse services to add intervention services as a level of care. Chapter HFS 75 was created effective August 1, 2000 to replace and update rules for certification of community alcohol and drug abuse prevention and treatment programs that were previously codified in subchapter III of ch. HFS 61. Chapter HFS 75 includes

the general requirements that apply to all or most of the different types of substance abuse services, and standards for particular services - prevention; emergency outpatient; medically managed inpatient detoxification; medically monitored residential detoxification; ambulatory detoxification; residential intoxication monitoring; medically managed inpatient treatment; medically monitored treatment; day treatment; outpatient treatment, transitional residential treatment; and narcotic treatment for opiate addiction. A particular provider may be certified to provide one or more types of service.

During the drafting of ch. HFS 75, provisions relating to intervention services that had previously been in ch. HFS 61 were inadvertently removed from proposed rules. Intervention services may now be a formal substance abuse service under the newly proposed s. HFS 75.16, or may be included in, but is not limited to, an educational program, an employee assistance program, an intoxicated driver assessment or driver safety plan program under ch. HFS 62, screening procedures under s. HFS 75.03 (10), or consultation provided to non-substance abuse professionals or may include outreach; problem identification; referral; information; specialized education; case management; consultation; training; support or drop-in services; intensive supervision; alternative education and intoxicated driver assessments under ch. HFS 62.

### **Summary of, and comparison with, existing or proposed federal regulations:**

The Department knows of no federal regulations that apply to the operation of a state's intoxicated driver program.

### **Comparison with rules and laws in adjacent states:**

**Illinois** - Title 77 Part 2060.503 of Illinois state administrative code sets forth standards for driving under the influence (DUI) evaluations. The purpose is to identify the offender's risk to public safety for the circuit court of venue and recommend an initial intervention to the DUI offender and to the circuit court of venue. While Illinois law allows each circuit court to develop sentencing rules for intoxicated drivers, the overall approach to handling intoxicated drivers is consistent with Wisconsin's chapter HFS 62. Under the same code, SubPart E, Illinois grants licenses to DUI "intervention" programs which is consistent with proposed changes ch. HFS 75.

**Iowa** - The substance abuse commission under Iowa code 643 Chapter 8 establishes standards for community programs and the operating a motor vehicle while intoxicated. The code sets forth screening, evaluation and treatment standards for persons convicted of driving while intoxicated. As in Wisconsin, Iowa's code provides for reciprocity with other states. For a resident of a state other than Iowa, screening, evaluation or treatment services shall be provided by programs licensed or approved by that state's substance abuse authority. This approach is consistent with ch. HFS 62. Chapter 3 of the Iowa code provides standards for assessment and evaluation programs which are consistent with Wisconsin's chapter HFS 75.

**Michigan** - Under Michigan law 257.625b (5) and before sentencing, local courts must order a convicted driver to undergo screening and assessment by a person or agency designated by the Michigan office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. The court may order the person to participate in and successfully complete one or more appropriate rehabilitative programs as part of the sentence. As with Illinois, individual courts have the authority to decide upon sentences, however, the overall approach to handling intoxicated drivers is consistent with ch. HFS 62. Michigan's administrative rules for substance abuse service programs under R 325.14521 - Problem Assistance and R 325.14701 - Outpatient Programs, are consistent with ch. HFS 75.

**Minnesota** – Minnesota statutes chapter 169A, implements Minnesota’s alcohol safety program. County boards there are to establish local alcohol safety programs which are designed to provide chemical use assessments of persons convicted of driving while impaired. Courts are required to order chemical use assessments and to order that the level of care recommended by the assessment be completed. Chapter 9530 of Minnesota chemical dependency program rules govern these chemical use assessments and are consistent with chs. HFS 62 and HFS 75. While Minnesota's levels of care are defined in terms of hours of service rather than setting or modality, there is no conflict with ch. HFS 62 or ch. HFS 75. Minnesota statutes chapter 169A of Minnesota law also establishes an intensive probation program for violators of driving while impaired laws much like the proposed intensive supervision program under chs. HFS 62 and HFS 75.

In summary, the proposed revisions are consistent with laws and rules in these states. In addition, the proposed changes to Ch. HFS 62 will allow residents of these four states who are convicted of driving under the influence in Wisconsin, to obtain their assessment and driver safety plan programs in their state of residence.

**Summary of factual data and analytical methodologies:**

In 1997, the Department of Transportation commissioned an evaluation of Wisconsin's intoxicated driver program. The study was completed by the Pacific Institute for Research and Evaluation. The study included a mail survey of the state's 72 county intoxicated driver assessment facilities, an in-depth qualitative study of nine counties, and a literature review of current best practices in the area of impaired driving solutions. The study identified several areas of the program that needed improvement. One of the study's principal findings is the lack of uniformity in programs from one county to the next. This is the primary issue addressed in the proposed revisions to chs. HFS 62 and HFS 75.

Another issue that is addressed in the proposed rules is the approximately 12 competent and existing intoxicated driver program assessment facilities that lost the ability to obtain certification since their category of service was inadvertently omitted during the creation of ch. HFS 75. The proposed rule restores this category of services as an intervention level of services in s. HFS 75.16.

Forty-seven of the affected entities are under the jurisdiction of county governments. Twenty-five of the affected entities are small private non-profit corporations providing various human services and would be considered small businesses. A workgroup composed of representatives from the 47 county agencies and the 25 small businesses worked with Department staff to develop and approve each and every proposed revision. One of the principles adhered to in the development of the proposed revisions were that there be no increased costs.

One example of how the workgroup was sensitive to cost issues had to do with continuing education. The new rules require six hours of continuing education each year for assessors. The rules are written in such a way as to allow credit for continuing education hours obtained for professional licensure or certification. The continuing education hours may also be obtained through no-cost options such as agency inservices. Another example is the restoration of the intervention service under ch. HFS 75. This alone will prevent 12 agencies from losing revenue and employees associated with services under ch. HFS 62.

The Department also consulted with the Wisconsin County Human Services Association and Department of Transportation staff in preparing the proposed rule revisions.

## **Analysis and supporting documents used to determine effect on small businesses:**

Each year in Wisconsin there are 8,800 alcohol-related traffic crashes, 6,200 alcohol-related crash injuries, and 325 alcohol-related crash deaths. Apart from public awareness, fines, penalties, and imprisonment, one of the critical solutions to this traffic safety problem is contained under the proposed rule revisions. Under statute [343.30(1q), Stats.] and the proposed rule revisions, each year approximately 35,000 individuals are convicted of driving while intoxicated and are ordered by the court or the Department of Transportation to undergo an alcohol and other drug abuse assessment and complete a driver safety plan. These driver safety plans recommend a program of education, treatment, or both to help the individual regain safe driving capability. An individual's driving privileges are reinstated if they complete the assessment and driver safety plan program.

Each county department of community programs or human services is required under s. 343.30(1q), Stats., and the current ch. HFS 62 (assessment of drivers with alcohol or controlled substance problems) to designate a single agency to provide the operating while intoxicated (OWI) assessment service. There are about 72 of these agencies statewide. These designated OWI assessment service agencies are either outpatient clinics operated by county government or a private non-profit organization under contract with county government. These assessment agencies also monitor the person's participation in the education or treatment program and submit appropriate records to the Department of Transportation for action on the person's driving privileges. Under ch. HFS 75, community substance abuse service standards, a county-designated intoxicated driver assessment agency is also approved by the Department to provide a variety of substance abuse education, intervention, and treatment services. Professional staff of these assessment agencies are also required to meet minimum credentials established under ss. HFS 75.02 (84), HFS 75.02 (11), HFS 61.06 (1) to (13), or ch. 457, Stats. These assessment agencies fulfill a critical role in Wisconsin's program to reduce intoxicated driving.

Under s. 343.30 (1q) (c) 2, Stats., the Department is directed to establish standards for OWI assessment procedures in order to ensure uniform and effective practices. The principal motivation for these rules, originally promulgated in 1984, is to protect consumers of these required services and those using the state's roads and highways. These rules have been developed to provide guidance to OWI assessment agencies to ensure uniformity and effectiveness of policies and procedures across the state.

It should be noted that while ch. HFS 62 is being repealed and recreated, most of the original 1984 rule is still intact and therefore diminishes the impact on affected agencies. The intent of the proposed revisions to ch. HFS 62 is to incorporate into the existing rules those policies and procedures disseminated through departmental policy memos since 1984. It was not the intent of the Legislature under s. 343.30 (1q) (c) 2, Stats., that the Department rely solely on policy memos to incorporate need changes into the program nor can the Department do an adequate job of monitoring the program based upon policy memos. Furthermore, OWI assessment agencies have requested that the Department update its state-approved policies and procedures by incorporating those policies that are still endorsed into the rules.

According to Department records (Bureau of Quality Assurance), there are approximately 640 entities in Wisconsin in the business of providing ambulatory substance abuse health care and treatment. The North American Industry Classification code for this industry is "621420". Forty-seven (47) of these 640 entities which are affected by the proposed rule, are operated by county governments. Twenty-five (25) of the affected entities are private non-profit corporations and would be considered small businesses [having fewer than 25 employees or not more than \$5 million in revenue under s. 227.114(1) Wis. Stats.]. Expressed as a proportion, about 4 percent of the entities providing substance abuse health care and treatment in Wisconsin are affected by the

proposed rule and are small businesses. A sample of these industry code 621420 small businesses which assisted in the revision of these rules includes the following (information provided by each agency):

<b>Corporate Name</b>	<b>Location</b>	<b>Number of Employees</b>	<b>Annual Payroll</b>
Addiction Resource Council	Waukesha, WI	23	\$521,000
Arbor Place	Menomonie, WI	32	\$617,000
Ashland Area Council on Alcoholism and Drug Abuse	Ashland, WI	6	\$164,400
Impact Alcohol and Other Drug Abuse Services	Milwaukee, WI	70	\$3,600,000
Racine Psychological Services	Racine, WI	14	\$531,000

These revised rules have a direct impact on small business entities which the Department certifies and provides general oversight. None of the 25 small businesses affected by these rules will be exempt from meeting the proposed rule changes, however, after careful review; the Department does permit variances or waivers if warranted. The Department has determined that exempting any entity from compliance with ch. HFS 62 or HFS 75 would compromise the health and safety of individuals receiving OWI assessment services and would negatively affect the program's ability to reduce intoxicated driving and make Wisconsin's roads and highways safe. Data from the Department of Transportation show that under the current program, 75 to 86 percent of persons convicted of OWI do not reoffend in a five-year period after their OWI arrest. Since the program started in 1984, the adult rate of driving under the influence has dropped from 11 percent to 5 percent (Behavioral Risk Factor Survey, Department of Health and Family Services); alcohol-related traffic crashes declined 60 percent; injuries declined 40 percent; and fatalities declined 30 percent (Department of Transportation).

To diminish the impact of the rule changes on affected agencies including small businesses, a workgroup composed of representatives from the 47 county agencies and the 25 small businesses joined with Department staff to develop and approve each and every proposed rule revision. One of the principles adhered to in the development of the proposed rule revisions were that there be no increased costs. Two potential cost elements emerge in the revised rules. The first is a requirement for OWI assessor professionals to obtain six hours of continuing education each year. This is necessary to ensure a competent workforce in this statewide program that directly affects so many people and has public safety implications. To reduce the cost impact, the rule has been written in such a way as to allow continuing education hours obtained for professional licensure or certification to be used to fulfill the requirement under the proposed rule revision. Furthermore, the continuing education hours requirement may be satisfied through no-cost educational options such as agency inservices.

The second is a requirement that all OWI assessment agencies be approved by the state under ch. HFS 75 (community substance abuse service standards). This requirement is necessary to protect the persons receiving services under the OWI program from abuses and ensure that minimum standards of agency practices are met. The Department will conduct on-site reviews to monitor compliance under ch. HFS 75. There is a cost of \$300 for this certification. Sixty (60) of the OWI assessment agencies affected by these rule revisions are currently certified under ch. HFS 75 so there is no additional certification required and therefore no cost impact. Twelve of the remaining OWI assessment agencies had been certified under ch. HFS 61 prior to the promulgation of ch. HFS 75 in 2000. The "intervention" service under which these programs had been certified in 2000 is being restored under these proposed rules. While there is an increased cost of \$300 per year for these 12 agencies under ch. HFS 75, the advisory committee felt these costs were negligible.

None of the potential cost elements increase agency operating costs by more than the 2004 Consumer Price Index of 2.7 percent nor decrease agency revenues by more than 2.7 percent.

As described previously, the principal purpose for the current revision of the rules was to incorporate endorsed and local agency-supported Department policy memos into ch. HFS 62. One such policy has to do with the filing and processing of complaints or appeals by persons receiving OWI assessment services. In order to expedite any complaint or appeal, the rule specifies that each step in the process be completed within five working days or in a timely fashion. It is in the best interest of the assessment agency and the client to expedite this process. Since this schedule was already in effect under Department policy, it was strongly supported by the advisory committee. Another deadline for compliance includes the requirement that assessor professionals obtain six hours of continuing education within a 12-month time frame. This too was supported by the advisory committee because similar requirements are already in effect for professional credentialing.

There are two new reporting or documentation requirements under the proposed rule revisions. The first pertains to an evaluation report under the ch. HFS 75 intervention service. This requirement will affect the 12 small businesses that will need to seek recertification under ch. HFS 75. It is important for agencies to objectively self-evaluate in order to ensure that the program's stated purpose is being achieved and to determine where improvements are needed. This further provides documentation of accountability to an agency's board as well as the Department. This evaluation process and report is a standard requirement for all 640 state-certified substance abuse service agencies across the state. The advisory committee has determined that these activities and documentation are already part of their agency's current functions and therefore there are no new costs.

A second area of documentation that is new to the proposed rule revisions is a requirement that alternative education programs maintain files containing a written program description and instructor credentials, coursework, and driving record. These requirements will affect just three of the 72 OWI assessment agencies that also provide an alternative education program. These files and documents are necessary in order to ensure that the curriculum and format used is consistent with sound adult education principles and that instructors meet minimum requirements for professional competence. The advisory committee has determined that these requirements are already part of their agency's current functions and there are no new costs.

As presented previously, there are some pertinent performance indicators that are monitored by the Department and the Department of Transportation to assess the OWI program's overall performance. These indicators include persons reconvicted of OWI, the adult rate of driving under the influence, alcohol-related traffic crashes, injuries, and fatalities. Some of these data are available for individual counties and some are not. It would both be costly and unrealistic to expect individual OWI assessment agencies to gather this data and achieve improvements in any of these areas because they play only one part in the overall program. Law enforcement, the courts, technical colleges, businesses, and community norms play an equally important part in the program's overall success. Ensuring that evidence-based practices and approaches are implemented is the best way to achieve success and ensure humane and effective services to consumers. Scientific literature and experts in the field of highway safety and addiction rehabilitation are regularly consulted in order to keep abreast of the latest approaches for achieving success under this program. This information, approaches and practices are passed on to community agencies in the form of training, and in some cases, enacted law.

As such, there are no significant increased costs in the areas of capital investments (land, structure, equipment), operational elements such as labor, energy, and purchased materials and

services, professional skills, ongoing transaction elements, or any other administrative compliance cost elements, or fees necessary for compliance with the rule. There are no new reporting requirements and no staff qualification or training requirements that would increase service costs substantially or create problems resulting in staff layoffs or difficulty recruiting qualified staff.

**Effect on small businesses:**

Pursuant to the foregoing analysis, the Department believes that the proposed rules will not have a significant economic impact on a substantial number of small businesses, as only 4 percent of the businesses affected by the proposed rules are small businesses and the rules do not increase operating costs or decrease revenues by more than the 2004 Consumer Price Index of 2.7 %.

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TEXT OF RULE

SECTION 1. HFS 62 is repealed and recreated to read:

**Chapter HFS 62**

**ASSESSMENT OF DRIVERS WITH ALCOHOL  
OR CONTROLLED SUBSTANCE PROBLEMS**

- HFS 62.01 Authority and purpose
- HFS 62.02 Applicability
- HFS 62.03 Definitions
- HFS 62.04 Board responsibilities for the intoxicated driver program
- HFS 62.05 Intoxicated driver assessment facilities

HFS 62.06	Driver safety plan providers
HFS 62.07	Assessments and driver safety plans
HFS 62.08	Compliance and noncompliance reporting for assessments
HFS 62.09	Compliance and noncompliance reporting for driver safety plans
HFS 62.10	Client responsibilities
HFS 62.11	Fees
HFS 62.12	Conflict of interest guidelines
HFS 62.13	Confidentiality of client records
HFS 62.14	Client rights
HFS 62.15	Appeals
HFS 62.16	Funding for services

**HFS 62.01 Authority and purpose.** (1) This chapter is promulgated under the authority of ss. 343.30 (1q) (c) 2. and 343.305 (10) (c) 2., Stats., to establish standards for assessment and driver safety plans for persons who operate a motor vehicle while under the influence of intoxicants or other drugs and who voluntarily, or by court order or by order of the Wisconsin department of transportation undergo an intoxicated driver assessment and complete a driver safety plan.

(2) The intent of this chapter is to engage the intoxicated driving client in assessment, education, and treatment services that address the client's inclination to drive under the influence and their substance use problems so that the client may regain safe driving capability.

**HFS 62.02 Applicability.** This chapter applies to the department, county human service boards, intoxicated driver assessment facilities, driver safety plan providers, and individuals who voluntarily or by order of a court or by order of the Wisconsin department of transportation undergo an intoxicated driver assessment and complete a driver safety plan.

**HFS 62.03 Definitions.** In this chapter:

(1) "Alternative education" means the traffic safety instruction provided under s. HFS 75.16 (5) that is designed to meet the goals of a group dynamic traffic safety program or a multiple offender traffic safety program for clients that cannot be accommodated by a group dynamic traffic safety program or a multiple offender traffic program.

(2) "Approved private treatment facility" has the meaning given in s. 51.45 (2) (b), Stats.

(3) "Approved public treatment facility" has the meaning given in s. 51.45 (2) (c), Stats.

(4) "Board" means a county human service board established under s. 46.23, Stats., or a county community programs board established under s. 51.42, Stats.

(5) "Client" means a person who is undergoing an intoxicated driver assessment or who is receiving treatment or education under a driver safety plan.

(6) "Controlled substance" has the meaning given in s. 961.01 (4), Stats.

(7) "Controlled substance analog" has the meaning given in s. 961.01 (4m), Stats.

(8) "Department" means the department of health and family services.



(9) “Dependency” means the use of alcohol, a controlled substance, controlled substance analog, or other drug, to the extent that it interferes with a user’s physical or mental health or social or economic functioning.

(10) “Designated coordinator” means a person appointed by a board under s. HFS 62.04 (5) who has completed the driver assessment training described under s. HFS 62.05 (3), and who is knowledgeable in the psychopharmacology of substances, addiction and addiction treatment, and sentencing and other procedures relating to violations of ss. 343.305 (3), 346.63, 940.09, or 940.25, Stats.

(11) “Driver safety plan” means an individualized plan that specifies recommended treatment, education, other services, or a combination of these, directed toward reducing a client’s inclination to drive under the influence of alcohol, a controlled substance, or controlled substance analog.

(12) “Driver safety plan provider” or “plan provider” means any one of the following:

(a) An approved public treatment facility or an approved private treatment facility certified by the department under ch. HFS 75 to provide substance abuse services or a comparable agency lawfully established for that purpose in another state.

(b) A traffic safety school under ch. Trans 106 or comparable school established as a traffic safety school in another state.

(c) A substance abuse treatment program administered by the federal veterans administration that is accredited by the joint commission on the accreditation of health organizations or another nationally recognized health care accrediting body.

(13) “Drug” has the meaning given under s. 961.01 (11), Stats.

(14) “Group dynamics traffic safety program” has the meaning given in s. Trans 106.02 (6).

Note: Section Trans 106.02 (6) defines “group dynamics traffic safety program” as a course that is approved by the department of transportation under s. 345.60, Stats., that encourages students to examine their chemical use habits, discuss their chemical use and their driving behavior and formulate an alternative life style which would improve their ability to safely operate a motor vehicle.

Note: For the purposes and use in this chapter, chemical is interpreted to have the same meaning as substance.

(15) “Interagency program for the intoxicated driver committee” or “IPID committee” means a collection of agency and organization representatives appointed by a board to guide the development and implementation of the intoxicated driver program.

(16) “Intoxicated driver assessment” or “assessment” means an examination of a client’s use of alcohol; a controlled substance; or a controlled substance analog by an intoxicated driver assessor.

(17) “Intoxicated driver assessment facility” or “assessment facility” means an approved private treatment facility or an approved public treatment facility that is certified under s. HFS 75.13

as an outpatient treatment service or s. HFS 75.16 as an intervention service and designated under s. HFS 62.04 (1) by a board to conduct intoxicated driver assessments.

(18) "Intoxicated driver assessor" or "assessor" means a person who is employed by or under contract with an assessment facility to conduct intoxicated driver assessments.

(19) "Local traffic safety school coordinator" means an individual appointed by the Wisconsin technical college district to oversee traffic safety school programs.

(20) "Multiple offender traffic safety program" has the meaning given in s. Trans 106.02 (8).

Note: Section Trans 106.02 (8) defines "multiple offender traffic safety program" as a course that is approved by the department of transportation under s. 345.60, Stats., that encourages students who have multiple traffic offenses involving chemical use to examine their chemical use habits, discuss their chemical use and their driving behavior and formulate an alternative life style which would improve their ability to safely operate a motor vehicle.

Note: For the purposes and use in this chapter, chemical is interpreted to have the same meaning as substance.

(21) "Substance" means alcohol, a psychoactive agent, or chemical that principally affects the central nervous system and alters mood or behavior.

(22) "Substance abuse" means use of alcohol or other drugs individually or in combination in a manner that interferes with functioning.

(23) "Traffic safety school" means all of the following:

(a) A group dynamics traffic safety program certified under s. Trans 106.02 (6).

(b) A multiple offender traffic safety program certified under s. Trans 106.02 (8)

(24) "Treatment" means the planned provision of services under ss. HFS 75.05 to 75.15 that are sensitive and responsive to a client's age, disability, if any, gender and culture that are conducted under clinical supervision to assist the client through the process of recovery.

Note: Treatment functions include screening, application of approved placement criteria, intake, orientation, assessment, individualized treatment planning, intervention, individual or group and family counseling, medication management, referral discharge planning, after care or continuing care, recordkeeping, consultation with other professionals regarding the client's treatment, recovery, or case management, and may include crisis intervention, client education, vocational assistance and problem resolution in life skills functioning.

(25) "Wisconsin assessment of the impaired driver" or "WAID" means the tool required for use in conducting intoxicated driver assessments.

**HFS 62.04 Board responsibilities for the intoxicated driver program.** Pursuant to authority under s. 51.42, Stats., a board shall implement an intoxicated driver program in the board's geographic area. To implement the intoxicated driver program, the board shall do all of the following:

(1) Designate a single intoxicated driver assessment facility that meets the qualifications and standards set forth under s. HFS 62.05.

(2) Designate driver safety plan providers who provide treatment to clients.

(3) Implement written policies, procedures, and guidelines that address all of the following:

(a) Client records. Policies, procedures, and guidelines shall address all of the following:

1. Custodian of client records.

2. Confidentiality of client records. Policies, procedures, or guidelines shall be consistent with s. HFS 62.13, ch. HFS 92 and applicable state and federal laws.

3. Client record retention and disposal.

4. Transfer of client records between agencies.

(b) Collaboration with and consultation to the courts, assessment facilities, out-of state assessment agencies, and driver safety plan providers.

(c) Fees that may be charged to clients under ch. HFS 1 and s. HFS 62.11 including notification to clients of the client's liability for fees.

(d) Client rights and appeals of assessments, driver safety plans, and reports of noncompliance.

(e) Conflict of interest guidelines.

(f) Client referrals to driver safety plan providers, to assessment facilities within the geographic area and other counties, and to out-of-state assessment agencies.

(g) Illegal discrimination by programs and staff.

(h) Training requirements.

(i) Assessments, including screening instruments and driver safety plans.

(j) Alternative education, including method for approvals.

(k) Procedures for assessments and driver safety plan services for persons referred from another board's geographic area, another state, or the Wisconsin department of corrections.

(L) Requests from assessment facilities to extend the time to conduct assessments or driver safety plans.

(4) Establish an IPID committee, if appropriate.

(5) Appoint a designated coordinator to be responsible for the intoxicated driver program on behalf of the board. The designated coordinator shall provide or arrange for all of the following:

(a) Participation in intoxicated driver program development, implementation and problem resolution.

(b) Consultation as needed to assessment facilities, driver safety plan providers, local traffic safety coordinators, clients, and the public as appropriate on board policy and procedures, requirements of this chapter, and fees.

(c) Information or assistance and consultation, to the courts which includes all of the following:

1. Informing the courts of the location, telephone number, and fees of the assessment facility.

2. Providing information about that board's assessment process that the court may use to inform adjudicated clients.

3. Making the court aware that the court's order should refer a Wisconsin resident directly to an assessment facility in the resident's county of residence, refer an individual without an established residence to the facility in the county of conviction, and refer an out-of-state resident to the facility in the county of conviction or to a Wisconsin border county facility when this is more convenient for the individual.

4. Informing the court about the use of the form MV 3632, Court Order for Intoxicated Driver Assessment and Driver Safety Plan.

Note: Form MV 3632, Court Order for Intoxicated Driver Assessment and Driver Safety Plan can be obtained by mailing or faxing a completed form DT1435 to Maps and Publications Sales, Department of Transportation, P.O. Box 7713, Madison, WI 53707-7713. Fax number 608-246-5632. Form DT1435 may be obtained at <http://www.dot.wisconsin.gov/drivers/forms/dt1435.pdf>.

5. Explaining to the court the confidential nature of reports and the need for client consent for disclosure.

(d) Facilitate an IPID committee if a committee is appointed by the board under sub. (4).

(e) Receive and maintain assessment facility and driver safety plan provider policies and procedures.

(f) Approve all of the following:

1. Screening instruments, in addition to the WAID, used by assessment facilities.

2. In conjunction with the local traffic safety school coordinator, approve driver safety plans that recommend alternative education when factors such as the client's language, developmental disability, mental illness, cognitive deficit, illiteracy, or extreme hardship are present.

3. Requests by an assessment facility under s. HFS 62.07 (1) (a) for an extension of the time to complete the assessment and driver safety plan.

(g) Provide reports requested by the board.

(h) Train assessment facilities and driver safety plan providers on procedures of the intoxicated driver program.

**HFS 62.05 Intoxicated driver assessment facilities.** (1) GENERAL REQUIREMENTS. No agency may conduct intoxicated driver assessments and develop driver safety plans unless appointed by the board as a designated intoxicated driver assessment facility under s. HFS 62.04 (1). The policies and procedures required under par. (a) shall be uniformly applied to all clients. An assessment facility shall do all of the following:

(a) Implement written policies and procedures for all of the following:

1. Client intake and orientation.
2. Maintaining client records. Policies implemented for client records shall be consistent with the policies, procedures and guidelines on confidentiality of client records created by the board under s. HFS 62.04 (3) (a) 2., ch. HFS 92, 45 CFR Part 164, Subpart E and other applicable state and federal laws.
3. Assessment and driver safety plans. Policies implemented for assessments and driver safety plans shall include a process for referring residents to appropriate plan providers and non-residents to an appropriate comparable intoxicated driver program in the person's state of residence.
4. Prohibit illegal discrimination by the program and staff.
5. Client rights and appeals process, including client notification of those rights.
6. Collaboration and correspondence with other assessment facilities, the courts, the designated coordinator, the Wisconsin department of transportation, traffic safety schools, driver safety plan providers, and clients.
7. Staff training.
8. Reporting requirements.
9. Fees.
10. Conflict of interest guidelines.
11. Quality assurance.

(b) Maintain a list of plan providers and fees policies of these providers that is updated annually.

(c) Perform other appropriate duties under this chapter as authorized by the board.

(2) STAFFING. (a) *Required staff.* 1. An assessment facility shall employ or contract with at least one intoxicated driver assessor. Each intoxicated driver assessor employed or under contract with the facility shall have successfully completed the intoxicated driver assessor training under s. HFS 62.05 (3) and have the qualifications of one of the following professions:

- a. A substance abuse counselor as defined under s. HFS 75.02 (84) (a).

- b. A clinical supervisor as defined under s. HFS 75.02 (11).
- c. A professional as defined in s. HFS 61.06 (1) to (13).
- d. A social worker; marriage and family therapist; or professional counselor licensed under ch. 457, Stats.

2. The department may approve the employment of individuals with lesser qualifications than those stated in subd. 1. if the assessment facility can demonstrate and document need. The department may limit the duration of any exception granted under this subdivision.

(b) *Supervision.* Competency in intoxicated driver assessment skills shall be documented through supervisor evaluations. The intoxicated driver program assessor shall be supervised by a superior who has completed the intoxicated driver assessment training required under sub. (3) and be knowledgeable in psychopharmacology of substances, addiction, and addiction treatment as evidenced by education, training, or experience.

(3) TRAINING. (a) Assessment facilities shall arrange for attendance of its intoxicated driver assessors at department-approved assessor training and other staff development training including training in local procedures provided or arranged by the designated coordinator.

(b) Each assessor shall successfully complete a minimum of 6 hours of continuing education each year. Continuing education may include formal courses awarding credits or continuing education units, workshops, seminars, or correspondence courses in any of the following areas:

1. Psychological and socio-cultural aspects of alcohol and drug abuse.
2. Pharmacology.
3. Communication and interviewing skills.
4. Screening, intake, assessment and treatment planning.
5. Human development, abnormal behavior, mental illness, or social learning theory.
6. Motivational interviewing.
7. Brief intervention.
8. Case management.
9. Record keeping.
10. Ethics.
11. Crisis intervention.
12. Outreach.
13. Quality assurance.

14. Other topics approved by the designated coordinator or the department.

**HFS 62.06 Driver safety plan providers.** In addition to complying with applicable provisions under this chapter, driver safety plan providers shall operate as follows:

(1) A driver safety plan provider who provides treatment to a client under ss. HFS 75.05 to 75.15 shall comply with the applicable provisions of ch. HFS 75.

(2) A driver safety plan provider who provides services to a client under ss. HFS 75.05 to 75.16 and this chapter shall include the intoxicated driver assessment findings and driver safety plan recommendations in their assessment and treatment planning.

(3) Traffic safety schools shall operate in accordance with applicable provisions under ch. Trans 106.

(4) Providers of alternative education shall operate in accordance with applicable provisions of this chapter and applicable provisions of s. HFS 75.13 or HFS 75.16.

Note: Section 51.45 (8) (a), Stats., permits a board or its designee to establish reasonable higher standards for approving driver safety plan providers who provide treatment or alternative education services for intoxicated drivers.

**HFS 62.07 Assessments and driver safety plans.** (1) GENERAL ASSESSMENT AND DRIVER SAFETY PLAN PROVISIONS. (a) The assessment facility shall complete and submit the intoxicated driver assessment and driver safety plan to the Wisconsin department of transportation; the designated coordinator; the driver safety plan provider; and the client within 14 calendar days of an order by the court or by the Wisconsin department of transportation for an assessment and driver safety plan, or voluntary submission of an individual for an assessment and driver safety plan. The assessment facility shall obtain the client's informed written consent to release information before the assessment and driver safety plan are submitted to the parties specified and ensure that the assessment findings and the driver safety plan are restricted for use only by these parties.

(b) The assessment facility and the client may make a written request to the designated coordinator for an extension of up to 20 additional working days of the time for completing and submitting an assessment and driver safety plan as required under par. (a). The designated coordinator shall notify the department of transportation upon granting an extension.

Note: The requirements for completing and distributing the assessment and driver safety plan that is set forth under par. (a), including the specified time limits, are mandated by the legislature under s. 343.30 (1q) (c) 3., Stats.

(c) Driver safety plan recommendations shall be supported by assessment findings, documented on form MV 3633, Driver Safety Plan Order, and made in accordance with the policies and procedures established by the assessment facility under s. HFS 62.05 (1) (a).

Note: Copies of form MV 3633, Driver Safety Plan Order can be obtained by mailing or faxing a completed form DT1435 to Maps and Publications Sales, Department of Transportation, P.O. Box 7713, Madison, WI 53707-7713. Fax number 608-246-5632. Form DT1435 may be obtained at <http://www.dot.wisconsin.gov/drivers/forms/dt1435.pdf>.

(d) Unless amended under sub. (7), driver safety plans shall have a termination date that is no longer than one year from the date of the client's signature on the driver safety plan.

(e) Each client shall be permitted and encouraged to participate in the development of the client's driver safety plan and selection of an appropriate plan provider.

(f) The driver safety plan shall be signed and dated by the client, stating that the client has reviewed the plan and is aware of the plan.

(g) Each driver safety plan shall designate one or more driver safety plan providers.

(h) A driver safety plan recommending treatment under sub. (5) (b) to (d) shall recommend the least restrictive treatment. The screening procedures under s. HFS 75.03 (10) may be used to develop the driver safety plan recommendation if the finding is one of the findings in sub. (4) (b) 2. to 5.

(i) Driver safety plans may include an assessor's recommendation for driver licensing action only as it relates to a client's use of alcohol or other drugs. Driver safety plans may include a recommendation for license denial until plan completion if there is a documented reason to believe the client will not participate in the driver safety plan to completion or that the client will drive while intoxicated.

(2) CONDUCTING AN ASSESSMENT. Only an intoxicated driver assessor may conduct assessments and develop driver safety plans. The assessment facility shall follow the board's procedures for registering clients and notify the client orally and in writing of all of the following before conducting an assessment:

(a) The appeal procedures under s. HFS 62.15.

(b) Applicable policies of the assessment facility.

(c) The client's liability for fees under s. HFS 62.11.

Note: Board registration procedures can be found in the board's information system manuals, handbooks and policy directives.

(3) METHOD OF ASSESSMENT. (a) The principal method for assessment shall be a personal interview with the client using the Wisconsin assessment of the impaired driver tool. The WAID may not be copied or distributed.

(b) Assessments may include information provided by other persons; review of relevant records or reports on the client; an interview using substance use disorder diagnostic criteria; an approved mental health screening tool; and additional information-gathering measures, instruments, and tests, including alcohol or drug testing, or lab tests deemed to be clinically useful and approved by the designated coordinator.

(4) ASSESSMENT FINDINGS. (a) Assessment findings shall be documented on form MV 3634, Order for Assessment and Driver Safety Plan Report, and include all of the following:

1. The applicable assessment finding as specified in par. (b) and a description of the information and WAID criteria that support the finding.



2. A description of the evaluation instruments applied during the assessments.
3. A description of any supplemental information obtained during the assessment.

(b) Assessment findings shall be any one of the following:

1. Irresponsible use of alcohol, controlled substance, controlled substance analog, or other drug.
2. Irresponsible use-borderline of alcohol, controlled substance, controlled substance analog, or other drug.
3. Suspected alcohol, controlled substance, controlled substance analog, or other drug dependency.
4. Alcohol, controlled substance, controlled substance analog or other drug dependency.
5. Alcohol, controlled substance, controlled substance analog or other drug dependency in remission.

Note: Copies of form MV 3634, Order for Assessment and Driver Safety Plan Report can be obtained by mailing or faxing a completed form DT1435 to Maps and Publications Sales, Department of Transportation, P.O. Box 7713, Madison, WI 53707-7713. Fax number 608-246-5632. Form DT1435 may be obtained at <http://www.dot.wisconsin.gov/drivers/forms/dt1435.pdf>.

(5) DRIVER SAFETY PLAN RECOMMENDATIONS. (a) *Traffic safety education recommendations* 1. 'Finding of irresponsible use'. If an assessment finding for a client is irresponsible use of alcohol, a controlled substance, a controlled substance analog, or other drug, the driver safety plan recommendation shall be any one of the following:

- a. Group dynamic traffic safety program, if the assessment is for a first offense.
- b. Multiple offender traffic safety program, if the assessment is for a second offense.

c. Alternative education. Alternative education driver safety plan recommendations shall have the prior approval of the local traffic safety school coordinator and the designated coordinator in the client's county of residence. If alternative education is approved for a client who does not have a language barrier, literacy barrier, developmental disability, mental illness, or cognitive deficit, the alternative education program shall be comparable to the appropriate group dynamic traffic safety program or multiple offender traffic safety program as it pertains to purpose, content, instructor qualifications, and hours as prescribed under s. HFS 75.16 (5). If the traffic safety school coordinator and the designated coordinator disagree regarding a referral to alternative education, the designated coordinator shall make a written request to the department for mediation.

Note: A request for mediation should be sent to Department of Health and Family Services, Division of Disability and Elder Services, Bureau of Mental Health and Substance Abuse Services, IDP Coordinator, 1 West Wilson Street, P.O. Box 7851, Madison, WI 53707-7851.

2. 'Finding of irresponsible use-borderline'. If the assessment finding for a client is irresponsible use-borderline of alcohol, a controlled substance, controlled substance analog, or other drug, the driver safety plan recommendation may be any one of the following

- a. Group dynamic traffic safety program, if the assessment is for a first offense.
- b. Multiple offender traffic safety program, if the assessment is for a second offense.

c. Alternative education. Driver safety plans recommending alternative education shall be approved by the local traffic safety school coordinator and the designated coordinator in the client's county of residence. If alternative education is approved for a client who does not have a language barrier, literacy barrier, developmental disability, mental illness, or cognitive deficit, the alternative education program shall be comparable to the appropriate group dynamic traffic safety program or multiple offender traffic safety program as it pertains to purpose, content, instructor qualifications, and hours as prescribed under s. HFS 75.16 (5). If the traffic safety school coordinator and the designated coordinator disagree regarding a referral to alternative education, the designated coordinator shall make a written request to the department for mediation.

Note: A request for mediation should be sent to Department of Health and Family Services, Division of Disability and Elder Services, Bureau of Mental Health and Substance Abuse Services, IDP Coordinator, 1 West Wilson Street, P.O. Box 7851, Madison, WI 53707-7851.

(b) *Treatment and other service recommendations.* 1. 'Finding of irresponsible use-borderline'. If the assessment finding for a client is irresponsible use-borderline of alcohol, a controlled substance, controlled substance analog, or other drug, the driver safety plan may recommend short-term outpatient substance abuse treatment under s. HFS 75.13.

2. 'Finding of suspected dependency'. If the assessment finding for a client is suspected alcohol, controlled substance, controlled substance analog, or other drug dependency, the driver safety plan shall recommend substance abuse treatment that does not include residential or inpatient services under ss. HFS 75.10, 75.11, or 75.14.

3. 'Finding of dependency'. If the assessment finding for a client is alcohol, controlled substance, controlled substance analog, or other drug dependency, the driver safety plan shall recommend substance abuse treatment under ss. HFS 75.10 to 75.15. If residential or inpatient services are recommended, the residential or inpatient services may not exceed 30 days.

4. 'Finding of dependency in remission'. If the assessment finding for a client is suspected alcohol, controlled substance, controlled substance analog, or other drug dependency in remission, the driver safety plan shall recommend substance abuse treatment.

(c) *Recommendations for traffic safety school and treatment.* A driver safety plan may recommend a combination of traffic safety school and treatment for assessment findings specified under sub. (4) (b) 2. to 5.

(d) *Other recommendations.* In addition to the recommendations under pars. (a) to (c), a driver safety plan may recommend any of the following:

1. Victim impact panel involvement. "Victim impact panel" means a component of a driver safety plan that is designed to create awareness in the client of the effects of his or her offense on a victim and the victim's family.

2. Case management as described under s. HFS 75.16 (6) if a treatment service is also recommended.

3. Intensive supervision as described under s. HFS 75.16 (7) if a treatment service is also recommended.

4. Mental health or psychiatric evaluation or services. Mental health or psychiatric evaluation or services recommendations shall have the prior authorization of a licensed psychiatrist, psychologist, clinical social worker, marriage and family therapist, professional counselor, or a master's level psychiatric advanced practice nurse.

5. Follow-up interviews with the assessment facility for clients who may need to be re-evaluated because of the validity of the client's responses during the initial assessment, the adequacy of a client's driver safety plan, or a driver safety plan recommendation for reassessment.

(6) REFERRALS. (a) *Information to the client.* Before a client is referred to a plan provider, the assessment facility shall do all of the following:

1. Give the client a list of approved driver safety plan providers that are located in the geographic area served by the board to assist the client in choosing a plan provider. The client shall be asked to acknowledge in writing that the client has been given information about approved driver safety plan providers.

2. Give the client information about the client's responsibilities under s. HFS 62.10 and the fee information for assessment and driver safety plan programs under s. HFS 62.11.

3. Ensure that the assessment findings and the driver safety plan information that will be distributed to a plan provider is the same information distributed to the client.

(b) *Non-resident drivers.* Clients who are non-residents of Wisconsin shall be referred to a comparable intoxicated driver assessment and driver safety plan program in the person's state of residence. The client shall request that the assessment agency in the client's state of residence furnish verification of compliance with the assessment to the Wisconsin department of transportation within 60 days after the date of conviction. The client shall have up to one year after the date of their original assessment to comply with the driver safety plan, unless an extension is requested under s. HFS 62.07 (7) (c).

(c) *Notification to plan providers.* When a client is referred to a driver safety plan provider, the assessment facility shall do all of the following:

1. Provide a copy of the assessment findings and driver safety plan to each plan provider designated under the driver safety plan.

2. If the driver safety plan provider provides a treatment service under ss. HFS 75.10 to 75.15, the plan provider shall be notified of all of the following:

a. That the client is to be evaluated so that the client's treatment plan may be individualized as directed by s. 51.45 (9) (d), Stats., and s. HFS 75.03 (13).

b. That the use of self-help groups such as Alcoholics Anonymous, Narcotics Anonymous or Women for Sobriety are permitted to supplement the individualized treatment plan services for clients with assessment findings listed under sub. (4) (b) 3. to 5. Participation in any one of these activities may not be a required element of an individualized treatment plan, nor may lack of participation be used as a basis for filing a noncompliance report.

c. The process under which the driver safety plan may be updated or amended.

(7) DRIVER SAFETY PLAN AMENDMENTS. (a) A driver safety plan may be amended within the one year driver safety plan time period under any one of the following circumstances:

1. The assessment facility, a plan provider, or an ignition interlock device report identifies additional information that may warrant a reassessment or additional driver safety plan services.

2. An individualized treatment plan becomes substantially different from the driver safety plan.

3. The driver safety plan is not completed within the one-year driver safety plan time period and an extension is granted by the Wisconsin department of transportation.

Note: Section 340.01 (23v), Stats., defines "ignition interlock device" as a device which measures the person's alcohol concentration and which is installed on a vehicle in such a manner that the vehicle will not start if the sample shows that the person has a prohibited alcohol concentration.

(b) Amended plans require informed written client consent to release information. A client may appeal under s. HFS 62.15 if the client disagrees with the amended plan.

(c) Amended plans must stay within the one year driver safety plan time period from the original assessment unless an extension has been granted by the Wisconsin department of transportation. An extension of the one year driver safety plan period shall be requested by the assessment facility before expiration of the client's one year driver safety plan period.

(d) If one year has lapsed since the original assessment and the driver safety plan is not completed, a reassessment of the client shall be conducted and a new driver safety plan period, not to exceed one year, begins with the reassessment.

(e) Amended assessment and driver safety plan reports shall be submitted to the parties listed under HFS 62.07 (1) (b).

**HFS 62.08 Compliance and noncompliance reporting for assessments.** (1) The assessment facility shall report a client's compliance or noncompliance with an assessment to the Wisconsin department of transportation and the client, using form MV 3631, Driver Safety Plan Report.

Note: Form MV 3631, Driver Safety Plan Report can be obtained by mailing or faxing a completed form DT1435 to Maps and Publications Sales, Department of Transportation, P.O. Box 7713, Madison, WI 53707-7713. Fax number 608-246-5632. Form DT1435 may be obtained at <http://www.dot.wisconsin.gov/drivers/forms/dt1435.pdf>.

(2) The assessment facility shall notify the client of their status of noncompliance with an assessment at least 5 working days before submission of the final report to the Wisconsin department of transportation. The notice shall specify how the client did not comply.

(3) The report required under sub. (1) shall be a report of noncompliance if any of the following circumstances occur:

(a) The client does not register with the assessment facility within 72 hours after the date of an order by a court or by the Wisconsin department of transportation.

(b) The client does not appear for a scheduled assessment.

(c) The client does not give informed written consent to release information.

(d) The client does not provide sufficient information to complete the WAID or allow any collateral contacts to verify unclear areas, thus preventing completion of a competent assessment.

(e) The client does not pay for the assessment.

(f) The client does not complete the assessment within 14 days after the court order or Wisconsin department of transportation order or within an approved request for an extension made under s. HFS 62.07 (1) (a).

(4) The designated coordinator or board-designated staff may approve submission of a noncompliance report to the department of transportation during an appeal process under s. HFS 62.15 (1) only if there is documented evidence that the client's use of alcohol, controlled substances, or any combination of alcohol and drugs is an impediment to the client's safe driving capability.

**HFS 62.09 Compliance and noncompliance reporting for driver safety plans.** (1) The assessment facility shall report a client's compliance or noncompliance with a driver safety plan to the Wisconsin department of transportation; the driver safety plan provider; and the client using form MV3631, Driver Safety Plan Report. A report of a client's compliance or noncompliance with a driver safety plan may not be further distributed.

Note: Form MV 3631, Driver Safety Plan Report can be obtained by mailing or faxing a completed form DT1435 to Maps and Publications Sales, Department of Transportation, P.O. Box 7713, Madison, WI 53707-7713. Fax number 608-246-5632. Form DT1435 may be obtained at <http://www.dot.wisconsin.gov/drivers/forms/dt1435.pdf>.

(2) The assessment facility shall notify the client of their status of noncompliance with a driver safety plan at least 5 working days before submission of the final report to the Wisconsin department of transportation. The notice shall specify how the client did not comply.

(3) Except for participation in self-help groups, the report submitted by the assessment facility under sub. (1) shall be a report of noncompliance if any of the following circumstances occur:

(a) The client does not give written consent to the driver safety plan.

(b) The client does not register with the driver safety plan provider within 3 working days after the assessment or does not participate within a reasonable period of time.

(c) The client does not accept driver safety plan programs by not attending or not cooperating.

(d) The client does not show reasonable progress in completing the driver safety plan according to the goals set out in the individualized treatment plan or the criteria for successful completion of an alternative education program.

(e) The client does not complete the driver safety plan within the documented driver safety plan period and no later than one year after the original assessment, or reassessment, or an extension granted by the Wisconsin department of transportation.

(f) The client does not pay the driver safety plan fee required under s. HFS 62.11.

(4) The designated coordinator or department-designated staff may approve submission of a noncompliance report to the Wisconsin department of transportation during an appeal process under s. HFS 62.15 (2) only if there is documented evidence that the client's use of alcohol, controlled substances, or any combination of alcohol and drugs is an impediment to the client's safe driving capability.

(5) Driver safety plan providers that are not traffic safety schools shall report a client's progress to the referring assessment facility and the client on a form provided by the assessment facility.

(6) For driver safety plans recommending only traffic safety school, the traffic safety school shall submit the reports of compliance and noncompliance to the Wisconsin department of transportation; the referring assessment facility; and the client. The report's use shall be restricted to these parties.

**HFS 62.10 Client responsibilities.** (1) An individual who has been ordered by the court or by the Wisconsin department of transportation for an assessment and driver safety plan shall register with the assessment facility within 72 hours after the date of the court order or order of the Wisconsin department of transportation.

(2) The client shall register with the driver safety plan provider within 3 working days after the date of the client's signature on the driver safety plan.

(3) (a) The client shall pay the fees required by an assessment facility and driver safety plan provider.

(b) If a client elects to receive driver safety plan services from a plan provider other than a driver safety plan provider designated to serve the board's geographic area under s. HFS 62.04 (1) and (2), the client is responsible for the full cost of services.

(4) If a driver safety plan is being developed for a client who voluntarily submitted for an assessment prior to conviction and the assessment finding is one of the findings that is described in s. HFS 62.07 (4) (b) 3. to 5., the client shall comply with the recommended driver safety plan.

(5) Wisconsin residents convicted of driving under the influence in another state shall comply with the assessment and driver safety plan requirements of the state or jurisdiction of conviction provided the requirements are comparable to the requirements set forth in this chapter.

**HFS 62.11 Fees.** (1) A client is required to pay a reasonable fee for an assessment or driver safety plan program to the appropriate agency. A client may be allowed to pay the assessment fee in 1, 2, 3, or 4 equal installments before an assessment is conducted. The fee for driver safety plan programs may be reduced or waived if the person is unable to pay the entire fee, but no fee for assessment, attendance at a traffic safety school or attendance at an alternative education program may be reduced or waived.

(2) Each client shall be informed of the fee policies of each assessment facility and each driver safety plan provider. Information provided to the client shall include whether the client is liable for the full cost of the services or whether the client may be eligible for reduced costs according to the client's ability to pay and the conditions of eligibility for reduced fees.

Note: Nothing in this chapter prevents an assessment facility from charging reasonable fees to recoup costs.

**HFS 62.12 Conflict of interest guidelines.** (1) (a) An assessment facility may not also be a client's driver safety plan provider unless at least one of the following conditions applies:

1. The board operates or contracts for both assessment and treatment programming from the same agency and there are limited resources in the area.

2. The board does not thereby duplicate or support duplication of established and approved programs.

3. The board would be forced to dismantle existing programming or fire personnel to effect separate facilities.

4. The board desires to support client choice and not exclude any provider.

(b) Paragraph (a) does not prohibit development of programming where appropriate programming is not available.

(2) An assessment facility that provides both assessment and driver safety plan services shall give each client a list of driver safety plan providers in compliance with s. HFS 62.07 (6) (a) and (b).

**HFS 62.13 Confidentiality of client records.** (1) CONFIDENTIALITY. Confidentiality of clients' records shall be consistent with all applicable state and federal laws.

(2) INFORMED CONSENT. No assessment or driver safety plan, compliance report or any other report related to a client may be shared with a court without the informed, written consent of the client.

**HFS 62.14 Client rights.** (1) Any client may file a grievance under ch. HFS 94 or s. 51.61, Stats., if the client believes that the client rights specified under ch. HFS 94 or s. 51.61, Stats., have been violated.

(2) If a client files a grievance under ch. HFS 94 or s. 51.61, Stats., the grievance review and resolution process does not change the timelines or reports of compliance or noncompliance specified in ss. HFS 62.07, 62.08, or 62.09 to complete the assessment and driver safety plan and the department of transportation notification of compliance or noncompliance.

**HFS 62.15 Appeals.** (1) APPEALS DURING ASSESSMENT AND DEVELOPMENT OF THE DRIVER SAFETY PLAN RECOMMENDATION. (a) A client who does not agree with an assessment finding or with driver safety plan recommendations is encouraged to discuss the assessment findings and recommended plan with the client's assessor at any time during the assessment process to provide additional information or clarification. If disagreement still exists, the client may appeal the assessment findings or driver safety plan to the director of the assessment facility or designee or if the assessment facility is a board, to the designated coordinator, in writing within 5 working days of receipt of the assessment finding and driver safety

plan. If the director, designee or designated coordinator determines that the assessment findings and driver safety plan are substantially correct, the client shall be given written notification that the client may appeal the determination to the board within 5 working days of receipt of the determination.

(b) The client shall be informed of the client's right to undergo another assessment at another assessment facility at his or her own expense. The client shall be informed that the designated coordinator or designee of the county of residence will review the results of the alternate assessment and determine the assessment finding and driver safety plan recommendation within 5 working days after receiving the information. If the client chooses to undergo another assessment, the original assessment facility shall obtain releases and forward the assessment findings and driver safety plan recommendations, and other relevant clinical information to the alternate assessment facility with instructions that the facility not submit a report of noncompliance required under ss. HFS 62.08 and 62.09 to the Wisconsin department of transportation.

(c) Appeals shall be processed according to written agency procedures that will result in a timely, complete, and impartial review and decision.

(2) APPEALS DURING TREATMENT. (a) A client under a treatment-oriented driver safety plan who believes that the individualized treatment plan developed under s. 51.45 (9) (d), Stats., is inappropriate and refuses to consent or withdraws consent to treatment may request the client's counselor or case manager in the treatment agency to review and consider an amendment to the treatment plan. If a conflict still exists, the client may appeal to the treatment agency director or designee in writing within 5 working days of the client requested review. If the director deems it appropriate, the client may be reassigned to a different counselor or case manager.

(b) If the treatment agency director or designee determines that the individualized plan is appropriate and a revision is not warranted, the client shall be given written notice of the client's right to appeal this decision to the board of the client's county of residence within 5 working days of receipt of written notice. The client shall be informed that the designated coordinator or designee will determine whether an amendment to the individualized treatment plan is indicated. The client's records shall be reviewed according to the review procedures established by that board or the department.

(c) The assessment facility or board may seek the advice of and consult with the department for any appeal in which the client remains dissatisfied with the appeal outcome after all local appeal procedures have been completed.

(d) After all appeal procedures have been completed, the assessment facility shall submit a report of noncompliance to the department of transportation as required under s. HFS 62.09.

(e) Appeals shall be processed according to written agency procedures for the review of client treatment plan objectives, activities, and progress by the director or designee and that will result in a timely, complete, and impartial review and decision.

(3) REVIEW OF NONCOMPLIANCE REPORT. The client shall be informed that he or she may request Wisconsin department of transportation review of the noncompliance report within 10 days of license suspension or revocation.

**HFS 62.16 Funding for services.** To support the provision of services under this chapter, the department shall distribute emergency funds authorized under s. 20.435 (7) (hy), Stats., and



surcharge revenues authorized under ss. 20.435 (7) (hy) and 346.655, Stats., by an allocation process developed in consultation with county representatives.

SECTION 2. HFS 75.01 (2) is amended to read:

HFS 75.01 (2) APPLICABILITY. This chapter applies to each substance abuse service that receives funds under ch. 51, Stats., is approved by the state methadone authority, is funded through the department as the federally designated single state agency for substance abuse services, receives substance abuse prevention and treatment funding or other funding specifically designated for providing services under ss. HFS 75.04 to ~~75.15~~ 75.16 or is a service operated by a private agency that requests certification.

SECTION 3. HFS 75.02 (1m) and (33m) are created to read:

HFS 75.02 (1m) "Alternative education" means a course of traffic safety instruction that is designed to meet the goals of a group dynamic traffic safety program or a multiple offender traffic safety program for clients that cannot be accommodated by a group dynamic traffic safety program or a multiple offender traffic safety program.

(33m) "Intensive supervision " means a program to promote public safety and reduce incarceration and recidivism related to substance abuse that includes all of the following:

(a) Centralized screening, review, evaluation, and monitoring of offenders by caseworkers in coordination with law enforcement, the district attorney, the courts, or the department of corrections.

(b) Community supervision of offenders from the time of arrest and formal charging through adjudication and compliance with court orders.

(c) Coordination of an array of interventions for the offender while under community supervision. Interventions to be coordinated may include any of the following:

1. Assessment.
2. Case management.
3. Alcohol or other drug abuse treatment.
4. Education.
5. Specialized education or skill-building programs.
5. Obtaining an intoxicated driver assessment under ch. HFS 62.
6. Periodic breath tests or urine analysis.
7. Attendance at victim impact panels.

(d) Programs such as the treatment alternative program under ch. HFS 66.

(e) A pretrial intervention program under s. 85.53, Stats.

(f) A corrective sanction program for juveniles under s. 938.533, Stats., or an intensive supervision program for juveniles under s. 938.534, Stats., a drug court, or other similar program.

SECTION. 4 HFS 75.02 (82) is amended to read:

HFS 75.02 (82) “Substance” means a psychoactive agent or chemical which principally affects the central nervous system and alters mood or behavior and may include nicotine if the individual is being treated for abuse of or dependence on alcohol or a controlled substance or a controlled substance analog under ch. 961, Stats.

SECTION. 5 HFS 75.02 (7) and (34) are repealed and recreated to read:

HFS 75.02 (7) “Case management” means an organized process for bringing services, agencies, resources and people together within a planned framework for the purpose of developing, linking, advocating for and monitoring the provision of appropriate educational, intervention, treatment, or support services to a client with alcohol or other drug abuse problems in a coordinated, efficient and effective manner.

HFS 75.02 (34) “Intervention” means a process of interrupting an action or a behavior that is harmful to an individual. “Intervention” may be a formal substance abuse service under s. HFS 75.16, or may be included in, but is not limited to, an educational program, an employee assistance program, an intoxicated driver assessment or driver safety plan program under ch. HFS 62, screening procedures under s. 75.03 (10), or consultation provided to non-substance abuse professionals.

SECTION 6. HFS 75.03 (1), (2), and Table 75.03 and title are amended to read:

**HFS 75.03 General requirements.** (1) APPLICABILITY. This section establishes general requirements that apply to the ~~42~~ 13 types of community substance abuse services under ss. HFS 75.04 to ~~75.15~~ 75.16. Not all general requirements apply to all services. Table HFS 75.03 indicates the general requirement subsections that apply to specific services.

TABLE HFS 75.03  
GENERAL REQUIREMENTS  
APPLICABLE TO EACH SERVICE  
SERVICE

HFS 75.03 GENERAL REQUIREMENT S	75. 04	75. 05	75. 06	75. 07	75. 08	75. 09	75. 10	75. 11	75. 12	75. 13	75. 14	75. 15	<u>75.</u> <u>16</u>
(2) Certification	X	X	X	X	X	X	X	X	X	X	X	X	<u>X</u>
(3) Governing Authority	X	X	X	X	X	X	X	X	X	X	X	X	<u>X</u>
(4) Personnel	X	X	X	X	X	X	X	X	X	X	X	X	<u>X</u>
(5) Staff Development	X	X	X	X	X	X	X	X	X	X	X	X	<u>X</u>
(6) Training in Mgmt of Suicidal Individuals	X	X	X	X	X	X	X	X	X	X	X	X	<u>X</u>
(7) Confidentiality	X	X	X	X	X	X	X	X	X	X	X	X	<u>X</u>
(8) Patient Case	O		X	X	X	X	X	X	X	X	X	X	O

Records													
(9) Case Records for Emergency Services	O	O	X	X	O	O	O	O	O	O	O	X	<u>O</u>
(10) Screening	O	X	X	X	X	X	X	X	X	X	X	X	<u>O</u>
(11) Intake	O	O	X	X	X	X	X	X	X	X	X	X	<u>O</u>
(12) Assessment	O	O	O	O	O	O	X	X	X	X	X	X	<u>O</u>
(13) Treatment Plan	O	O	O	O	O	O	X	X	X	X	X	X	<u>O</u>
(14) Staffing	O	O	X	X	X	X	X	X	X	X	X	X	<u>O</u>
(15) Progress Notes	O	O	X	X	X	X	X	X	X	X	X	X	<u>O</u>
(16) Transfer	O	O	X	X	X	X	X	X	X	X	X	X	<u>O</u>
(17) Discharge or Termination	O	O	X	X	X	X	X	X	X	X	X	X	<u>O</u>
(18) Referral	X	X	X	X	X	X	X	X	X	X	X	X	<u>X</u>
(19) Follow-up	O	O	X	X	X	X	X	X	X	X	X	X	<u>O</u>
(20) Service Evaluation	X	X	X	X	X	X	X	X	X	X	X	X	<u>O</u>
(21) Communicable Disease Screening	O	O	X	X	X	X	X	X	X	X	X	X	<u>O</u>
(22) Unlawful Substance Use	X	X	X	X	X	X	X	X	X	X	X	X	<u>X</u>
(23) Emergency Shelter and Care	O	O	X	X	X	X	X	X	X	X	X	X	<u>O</u>
(24) Death Reporting	O	X	X	X	X	X	X	X	X	X	X	X	<u>O</u>

(2) CERTIFICATION. (a) *Approval.* Each service that receives funds under ch. 51, Stats., is approved by the state methadone authority, is funded through the department's bureau of substance abuse services, or receives other substance abuse prevention and treatment funding or other funding specifically designated to be used for providing services described under ss. HFS 75.04 to ~~75.15~~ 75.16, shall be certified by the department under this chapter.

SECTION 7. HFS 75.13 (2m) are created to read:

HFS 75.13 (2m) If an outpatient treatment service is designated by a board under s. HFS 62.04 (1) as an assessment facility, the outpatient treatment service shall also comply with the requirements under ch. HFS 62.

SECTION 8. HFS 75.16 is created to read:

**HFS 75.16 Intervention service.** (1) SERVICE DESCRIPTION. Intervention services may include outreach; problem identification; referral; information; specialized education; case management; consultation; training; support or drop-in services; intensive supervision; alternative education; and intoxicated driver assessments under ch. HFS 62.

(2) REQUIREMENTS. (a) To receive certification from the department under this chapter, an intervention service shall comply with the requirements included in s. HFS 75.03 that apply to

an intervention service, and with the requirements of this section. If a requirement in this section conflicts with an applicable requirement in s. HFS 75.03, the requirement in this section shall be followed.

(b) If an intervention service is designated by a board under s. HFS 62.04 (1) as an assessment facility, the intervention service shall also comply with the requirements under ch. HFS 62.

(3) **REQUIRED PERSONNEL.** In addition to the personnel required under s. HFS 75.03 (4), an intervention service shall have the following personnel:

(a) Staff knowledgeable of the pharmacology of substances, addiction, and addiction intervention with training and experience in alcohol and drug problem outreach, detecting and identifying problems, screening under s. HFS 75.03 (10) (c), family intervention, and referral. Staff shall have knowledge, training, and experience in the service which they are responsible for providing.

(b) A substance abuse counselor, employed by or under contract with an approved service under ss. HFS 75.05 to 75.16, shall be available to conduct substance use evaluations and develop treatment recommendations as needed. A substance abuse counselor is not required for the assessment of drivers under ch. HFS 62.

(c) Qualified staff, designated by the agency director, may conduct psychosocial evaluations, administer multidisciplinary screening tools, provide education, outreach, intervention and support, and make referrals as needed.

(d) Social workers, physicians, psychologists, and psychiatrists shall be available for referral as needed.

(4) **SERVICE OPERATIONS.** (a) A plan for outreach and intervention services to various target populations shall be developed and implemented. Included in this plan shall be a provision of outreach and intervention services outside regular office hours and office location.

(b) Substance use screenings and evaluations shall be completed by qualified staff to determine the presence of alcohol and other drug use problems.

(c) Information shall be provided about alcohol and other drug use or abuse to assist clients in decision making.

(d) Assistance shall be provided to individuals regarding sources of help, referrals and arrangements for services.

(e) The service shall develop a system of referral that includes a current listing of agencies, organizations, and individuals to whom referrals may be made and a brief description of the range of services available from each referral resource.

(f) There shall be a written plan for and follow-up that includes qualified service organization agreements with treatment agencies to determine follow-through on referrals for service.

(g) Operating hours of the program shall be scheduled to allow access at reasonable times and shall be so documented.

(h) The program shall provide reasonable access for walk-in or drop-in clients.

(i) Information shall be provided to ensure public awareness of program operation, location, purpose, and accessibility.

(j) There shall be a written agreement for provision of 24-hour telephone coverage, 7 days a week, to provide crisis counseling, alcohol and drug information, referral to service agencies and related information. Staff without previous experience in providing these telephone services shall complete 40 hours of staff development training prior to assuming job responsibilities.

(k) Records shall be maintained to document the services provided.

(L) The service shall have an evaluation plan. The evaluation plan shall include all of the following:

1. A written statement of the service's goals, objectives, and measurable expected outcomes that relate directly to the service's participants or target population.

2. Methods for evaluating and measuring the effectiveness of services and using the information for service improvement.

3. The service director shall complete an annual report on the service's progress in meeting goals and objectives and shall keep the report on file and shall make it available for review to an authorized representative of the department upon request.

4. The governing authority or legal owner of the service and the service director shall review all evaluation reports and make changes in service operations as appropriate.

(m) Intervention services under this section are not required to meet the conditions under s. HFS 75.03 (3) (i).

(5) ALTERNATIVE EDUCATION PROGRAMS (a) *General*. 1. Alternative education programs shall be modeled after group dynamic traffic safety and multiple offender traffic safety programs and shall achieve a constructive, interactive, cohesive, and trusting atmosphere in the group; review and discuss operating while intoxicated laws and penalties; address the central causes and consequences of driving while intoxicated; discuss the effects of alcohol and substances on the mind, body, and driving ability; discuss the psycho-social factors involved in alcohol and substance use; explore blood alcohol concentration and the differences between alcohol and substance use, abuse, and addiction and where participants are at in relation to it; and assist the participant in developing and following a personal change plan.

2. In addition to the content and objectives under subd. 1., programs in lieu of a multiple offender traffic safety program shall involve concerned others, such as a spouse, parent, adult relative, or other appropriate person approved by the instructor and shall provide education on basic skills in the areas of stress-reduction, alcohol and drug refusal, interpersonal communication, and anger management.

3. Classroom instruction time for programs that are in lieu of group dynamic traffic safety programs shall be a minimum of 16 hours.

4. Classroom instruction time for programs that are in lieu of multiple offender traffic safety programs shall be a minimum of 24 hours, including a group-oriented follow-up session. The

group-oriented follow-up session shall be held within 3 months after completion of the initial 23 hours of the program. If a participant's residence is 60 miles or more from the site of the group-oriented follow-up session, the follow-up session may be conducted by telephone with the participant and a concerned other, such as a spouse, parent, adult relative, or other appropriate person.

5. Classroom instruction time may not exceed 8 hours per day.

6. A report of course completion or non-completion shall be submitted to the intoxicated driver assessment facility designated under s. HFS 62.04 (1) for each client assessed by that facility.

7. Participants completing a program under this section are not entitled to a 3-point reduction in the points assessed against the participant's operator's license.

8. The effectiveness of alternative education programs shall be evaluated by administering pretests and posttests of knowledge gained by participants, changed attitudes of participants, and participant satisfaction surveys.

(b) *Instructor qualifications.* Instructors conducting alternative education shall have the following qualifications:

1. Alcohol and other drug abuse experience equal to one of the following:

a. Two years of employment experience or a comparable amount of experience and education in the area of alcohol and other drug abuse counseling, assessment, education, or treatment or related fields such as student assistance program director or employee assistance program director.

b. Completed a minimum of a one semester, 3-credit, 45-hour course in the area of alcohol and other drug abuse education or treatment from an accredited college.

2. Group process experience equal to one of the following:

a. Two years employment experience in group process work or group counseling as a treatment or education professional.

b. Completed a minimum of a one semester, 3-credit, 45-hour course in the area of group work methods, group counseling or group process from an accredited college.

c. Bachelor's or master's degree in guidance counseling, psychology, behavioral studies or social work.

3. Hold a valid driver's license from the state of Wisconsin or from the jurisdiction in which the person resides. Programs having nonresident instructors shall maintain a record of the nonresident's driver's license and traffic conviction status in the past 12 months.

4. Possess a satisfactory driving record as defined under s. Trans 106.02 (11).

a. An individual may not be employed as an instructor until 6 months after the date of any traffic conviction that results in an accumulation of 7 or more points against the individual's driver's

license, or until 12 months from the date of an operating while intoxicated conviction under ss. 23.33, 30.68, 346.63, 350.101, 940.09, or 940.25, Stats., or an order under s. 343.305, Stats.

b. Instructors under this section are not eligible to receive a 3-point reduction by completing a traffic safety course.

c. Once employed as an instructor under this section, an individual's failure to maintain a satisfactory driving record shall result in the suspension of the individual's instruction duties for 6 months from the date of conviction for a violation which places the point total over 6 points or for 12 months from the date of an operating while intoxicated conviction. If additional points are incurred or the individual is convicted of an operating while intoxicated during the suspension period, the individual's instruction duties shall be suspended for 12 months from the date of conviction for a violation which results in points or for 24 months from the date of an operating while intoxicated conviction.

5. Instructors shall document receiving a minimum of 6 hours of continuing education in a related area, approved by the department, during each 12 months that the individual is employed as an instructor under this section. This training may include formal courses awarding credits or continuing education units, workshops, seminars, or correspondence courses.

(c) Agencies providing an alternative education program shall comply with all requirements included in s. HFS 75.03 that apply to an intervention service as shown in Table HFS 75.03 and this section except alternative education services are not required to meet the requirement under sub. (4) (j).

(d) Alternative education programs provided by agencies certified under s. HFS 75.13 need not also be approved under this section. However, the program shall comply with all the requirements that apply to alternative education programs under this subsection.

(6) CASE MANAGEMENT SERVICES. (a) The purpose of case management under this section is to bring services, agencies, resources and people together within a planned framework for in order to develop, link, advocate for and monitor the provision of appropriate educational, intervention, treatment, or support services for a client with alcohol or other drug abuse problems in a coordinated, efficient and effective manner and meet the client's individual needs or the requirements of the driver safety plan under ch. HFS 62.07 (6).

(b) Staff providing case management services shall have knowledge, training, and experience in providing case management.

(c) Agencies providing case management shall comply with all requirements included in s. HFS 75.03 that apply to an intervention service as shown in Table HFS 75.03 and this subsection except case management services are not required to meet the requirement under sub. (4) (j).

(d) Case management services provided by agencies certified under s. HFS 75.13 need not also be approved under this section. However, the program shall comply with all the requirements that apply to case management services under this subsection.

(7) INTENSIVE SUPERVISION SERVICE. (a) The purpose of intensive supervision under this section is to promote public safety and reduce incarceration and recidivism related to substance abuse through centralized screening, review, evaluation, and monitoring of offenders by caseworkers in coordination with law enforcement, the district attorney, the courts, or the department of corrections and includes all of the following services:

1. Screening under s. HFS 75.03 (10) (c) and other multidisciplinary screenings and psychosocial evaluations.

2. Conducting substance use evaluations and developing treatment recommendations by a substance abuse counselor.

3. Facilitating specialized education and skill-building groups where the primary group topic is alcohol and other drug abuse education, intervention, or relapse prevention and the participants are persons having alcohol or other drug abuse problems.

(b) Staff providing approved intensive supervision program service components shall have knowledge, training, and experience in the component they are providing or otherwise meet the qualifications to provide the service.

(c) Agencies providing intensive supervision shall comply with all requirements included in s. HFS 75.03 that apply to an intervention service as shown in Table HFS 75.03 and this subsection except intensive supervision services are not required to meet the requirement under sub. (4) (j).

(d) Intensive supervision services provided by agencies certified under s. HFS 75.12 or 75.13 need not also be approved under this section. However, the program shall comply with all the requirements that apply to intensive supervision programs under this subsection.

SECTION. 9. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health and  
Family Services

Dated:

By: \_\_\_\_\_

Helene Nelson  
Secretary

SEAL: