

The Governor approved this Statement of Scope on September 13, 2016

STATEMENT OF SCOPE
DEPARTMENT OF HEALTH SERVICES

Rule No.: DHS 62

Relating to: DHS 62, Assessment of Drivers with Alcohol or Controlled Substance Problems

Rule Type: Permanent

Type of Statement of Scope: Original

1. Finding/nature of emergency (Emergency Rule only):

Not applicable.

2. Detailed description of the objective of the proposed rule:

The objective of the rulemaking is to repeal and recreate ch. DHS 62, Wis. Admin. Code, *Assessment of Drivers with Alcohol or Controlled Substance Problems*, in order to update and improve the Intoxicated Driver Program (IDP) and to address the following specific problems:

1. Conform ch. DHS 62 to ch. 51 and s. 343.30 (1q), Stats., as amended by 2013 Wisconsin Act 246, relating to federally-recognized American Indian tribes or bands participating in the intoxicated driver program.
2. Clarify the roles and responsibilities of agencies participating in the IDP, including those of approved tribal treatment facilities authorized under 2013 WI Act 246.
3. Identify a more effective and thorough assessment/screening tool than is currently required under ch. DHS 62.
4. Clarify and improve provisions of ch. DHS 62 addressing assessments and driver safety plans that are outdated, confusing, and require revision to reflect current practices and insights.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Chapter DHS 62 establishes, under ss. 343.30 (1q) (c) 2. and 343.305 (10) (c) 2., Stats., the standards for assessment procedures, driver safety plan programs, and conflict of interest guidelines for approved public and private intoxicated driver assessment facilities designated by a county board to conduct intoxicated driver assessments. The conflict of interest provisions prohibit an assessment facility from also being a person's driver safety plan provider unless specified conditions apply.

The legislature, by 2013 Wisconsin Act 246, amended or created provisions in chs. 20, 46, 51, 343, 345, and 346, Stats., making it possible for approved tribal treatment facilities, as defined in s. 51.01 (2c), Stats., to operate an intoxicated driver program, which includes conducting intoxicated driver assessments and developing driver safety plans. If the person who is court-ordered to submit to and comply with an intoxicated driver assessment is a member or relative of a member of a federally-recognized American Indian tribe or band, the approved tribal treatment facility may conduct an assessment for that person. The department's conflict of interest guidelines may not preclude an approved tribal treatment facility from conducting assessments and providing treatment under s. 343.30 (1q), Stats., as amended by 2013 Wisconsin Act 246.

To conform ch. DHS 62 to ch. 51 and s. 343.30 (1q), Stats., as amended by 2013 Wisconsin Act 246, the department proposes to revise ch. DHS 62 to reflect that approved tribal treatment agencies as defined in s. 51.01 (2c), Stats., are subject to ch. DHS 62, and to ensure that the conflict of interest guidelines established in ch. DHS 62 do not preclude approved tribal treatment agencies, as defined in s. 51.01 (2c), Stats., from meeting their responsibilities under s. 343.30 (1) (q), Stats.

The department proposes to repeal and recreate DHS 62 to improve the Intoxicated Driver Program and reflect current best practices. Since the screening tool currently required by ch. DHS 62 was developed in the late-1970's, the department proposes to identify a more effective, thorough and evidence-based assessment/screening tool that better identifies the extent to which alcohol and/or other drug use impacts a driver and to target educational, intervention and treatment services based on a driver's need. The department will also clarify and improve provisions of ch. DHS 62 addressing assessments and driver safety plans that are outdated or confusing. DHS 62 will require revision to reflect current practices and insights.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 227.11 (2) (a), Stats., reads: Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

Section 343.30 (1q) (c) 2., Stats., reads: The department of health services shall establish standards for assessment procedures and the driver safety plan programs by rule. The department

of health services shall establish by rule conflict of interest guidelines for providers. The conflict of interest guidelines may not preclude an approved tribal treatment facility, as defined in s. 51.01 (2c), from conducting assessments and providing treatment under this subsection.

Section 343.305 (10) (c) 2., Stats, reads: The department of health services shall establish standards for assessment procedures and the driver safety plan programs by rule. The department of health services shall establish by rule conflict of interest guidelines for providers.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Department staff may spend 2000 hours promulgating the rule. No other resources are necessary to develop the rule.

6. List with description of all entities that may be affected by the proposed rule:

Federally-recognized American Indian tribes or bands and approved tribal treatment agencies, as defined under s. 51.01 (2c), Stats, designated IDP assessment agencies; driver safety plan providers, including treatment agencies certified under ch. DHS 75; drivers convicted of Operating While Intoxicated (OWI); the Wisconsin Department of Transportation; and the Wisconsin Technical Colleges.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

8. Anticipated economic impact of implementing the rule:

The department anticipates little to no economic impact from the proposed revisions to ch. DHS 62.

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