

Response to Comments by Legislative Council Staff
Substance Abuse Screening, Testing, and Treatment for Certain
Department Work Experience Programs

DCF 105

All comments were accepted or rendered moot by revisions, except the following:

Comment 5. b. The Department has rejected the recommendation to specify suitable methods of analysis for an initial test because it has no expertise or qualifications to make such a recommendation and does not want to foreclose new testing technology that may come into use in the drug testing industry. A qualified drug testing vendor will follow industry standards for testing for both the initial and confirmation test. For this reason, while the Department has retained the requirements that the testing method in the confirmation test be different from that used in the initial test and capable of quantifying the analytes in the specimen, it removed the list of suitable methods of analysis for the confirmation test from the proposed rule. The Department believes that this serves to simplify the rule.

The Department has rejected the recommendation to identify a list of controlled substances to be included in a test in rule rather than added or deleted by policy. By identifying the list of controlled substances in policy, the Department has the flexibility to make immediate changes to the list and ensure that the work experience program drug testing practices remain consistent with that of Wisconsin employers.

Comment 5. f. The Department accepted this recommendation in part. The Department selected the term “drug testing vendor” to use consistently but has rejected the recommendation to define the term. The Department does not believe that it is necessary to define this term in rule.

Comment 5. g. The Department accepted this recommendation in part. The Department has rejected the recommendation to define the term “medical review process” and clarify what the medical review process entails. Instead, the Department has removed this term from the rule. To remain licensed as a physician, a MRO must follow established policies and practices to ensure quality of services and high standards of professional conduct. The Department does not have any expertise or qualifications to define a process and defers to the expertise of the drug testing vendor and the licensed physician serving as a MRO for the drug testing vendor to determine acceptable procedures. For this reason, the Department does not believe that it is necessary to outline this process in rule.

Comment 5. j. The Department has rejected the recommendation to specify attendance or participation requirements an individual must fail or refuse to meet in order to be considered a failure or refusal to participate in treatment. Individuals’ treatment recommendations will be based on an assessment by a substance abuse treatment provider and it is anticipated that the schedule and intensity of the various treatment programs individuals will be referred to will vary greatly. Thus, it is not possible to identify a specific standard that will be appropriate for all individuals. As written, the rule allows a failure or refusal to be based on the guidelines specific to the individual’s treatment program.

Comment 5. k. The Department accepted this recommendation in part. The proposed rule has removed all references to an alternative treatment option to simplify the language and terms surrounding treatment re-entry.

The Department also clarified that the treatment provider must determine the terms of the individual’s re-entry into treatment based on an assessment of the individual’s treatment needs at the time the individual re-enters treatment.

Comment 5. l. The Department accepted this recommendation in part. The proposed rule has been updated to eliminate the option to shorten the 12-month ineligibility period by providing evidence of successful completion of a treatment program. The Department believes that removing this provision from the proposed rule reduces confusion surrounding the ineligibility period and prevents potential conflict with program-specific requirements that prohibit reapplication.

The definition in s. 105.02 (11) has been changed from a definition of “treatment provider” to a definition of “treatment program” to be consistent with ch. DHS 75 which certifies programs, not the provider delivering treatment programs.

Comment 5. m. The Department accepted this recommendation in part. The Department added language to clarify that additional tests during required treatment may be directed by the administering agency if recommended by the treatment provider or required under par. (c) that requires an additional test during treatment following re-entry.

Comment 5. n. The Department accepted this recommendation in part. The Department added language to clarify that the treatment provider determines eligibility to re-enter treatment based on an assessment of the person’s treatment needs at the time the person re-enters treatment. The Department rejected the suggestion to include language to clarify whether an individual is removed from a treatment program if the individual tests positive for the use of a controlled substance. The Department believes that the provision that the treatment provider must determine the terms of the person’s re-entry into treatment is adequate. This is not an area where the Department has the knowledge or expertise to establish standards for treatment decisions. The treatment provider must have the flexibility necessary to follow clinical standards, program-specific policies, and other relevant guidelines for treatment eligibility.