

Chapter Trans 107

DRIVER LICENSING OF PERSONS WITH CHEMICAL
ABUSE OR DEPENDENCY PROBLEMS

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Note: Chapter Trans 107 was created by emergency rule effective 5-1-82.

Trans 107.01 Purpose and scope. (1) **STATUTORY AUTHORITY.** As authorized by ss. 85.16 (1), 227.11, and 343.305 (11), Stats., the purpose of this chapter is to establish the department's administrative interpretation of ss. 110.08, 227.42, 227.51, 343.06 (4), 343.16 (2), 343.25 (4) and (7), 343.30 (1q) (c), 343.30 (1q) (d), 343.30 (1q) (f), 343.305 (10) (c), 343.305 (10) (d), 343.305 (10) (em), 343.305 (10) (f), 343.32 (2) (e), 343.40, 346.63 (1), 343.63 (2), 346.635, 940.09 and 940.25; Stats., relating to driver licensing of persons who have chemical abuse or chemical dependency problems.

(2) **APPLICABILITY.** This chapter applies to anyone operating a motor vehicle and to actions of the department in carrying out its driver licensing responsibilities under ch. 343, Stats.

Note: Forms used in administering this chapter are department of transportation MVD 3218 report of interview, MVD 3259, Michigan alcohol screening test, MVD 3030 medical report, general, MVD 3030M medical report, mental, MVD 3113 medical report, MVD 3304 course completion certificate, MVD 3395 operator's license receipt, MVD 3141 driver behavior report, and department of health and social services forms DCS 750, 751, 753, 756, and 757.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; am. (1), Register, September, 1986, No. 369, eff. 10-1-86; am. (1), Register, May, 1988, No. 389, eff. 6-1-88.

Trans 107.02 Definitions. In this chapter:

(1) "Assessment" means an examination of the person's use of chemicals and development of a rehabilitation or driver safety plan for the person by an approved public treatment facility as defined in s. 51.45 (2) (c), Stats., or as defined by a treatment facility in another state.

(2) "Assessor" means a person who conducts assessments under s. 51.42 (5) (b), Stats., in a public treatment facility, as defined in s. 51.45 (2) (c), Stats., according to the standards set forth in ch. HSS 62, and instructions of the department of health and social services.

(3) "Chemical abuse" means the use of alcohol or other drugs, prescription or non-prescription, which may adversely affect driving ability.

(4) "Chemical dependency" means dependence on alcohol or addiction to the use of a controlled substance that has attained such a degree that it interferes with a person's physical or mental health or social or economic functioning.

(5) "Controlled substance" has the same meaning as in s. 161.01 (4), Stats.

(5m) "County department" means the community services program established under s. 51.42, Stats., or its approved agency, or the community human services board established under s. 46.23, Stats., that is responsible for each Wisconsin county's provision of services for chemical abuse or dependency under ss. 51.42 and 51.45, Stats.

(6) "Department" means the Wisconsin department of transportation.

(7) "Driver safety plan" means: (a) An individualized plan based on an assessment referral May 1, 1982 or after which specifies a traffic safety school defined under s. 345.60, Stats., or treatment services, or a combination, for alleviation of identified chemical abuse or dependency problems.

(b) For offenses or arrests occurring on or after March 1, 1987, for non-residents or residents temporarily residing in another state, "driver safety plan" means either an individualized plan under par. (a) or a program which satisfies the requirements of the other state.

(8) "Improper refusal" means refusing to submit to chemical testing for alcohol or controlled substances, or any combination, and no request for a court refusal hearing, or an adverse finding in an implied consent hearing under s. 343.305, Stats.

(9) "Interview" means a meeting as described in s. Trans 107.06 (2) between a department representative and a licensed driver or applicant for the purpose of evaluating the probability of an alcohol or other drug problem.

(10) "Licensing action" means any action by the department involving the denial, cancellation, revocation, suspension, restriction, or issuance of a license under this chapter.

(11) "Medical condition" means any condition affecting a person's health for which a person is receiving medical treatment, or for which medical treatment is usually prescribed.

(12) "OWI" means operating a motor vehicle while under the influence of an intoxicant or controlled substance, or both, in violation of ss. 346.63 (1) or (2), 940.09 or 940.25, Stats., or a local ordinance in conformity with s. 346.63 (1), Stats., or any similar conviction in another jurisdiction.

(13) "Rehabilitation plan" means an individualized plan based on an assessment referral prior to May 1, 1982, which specifies a traffic safety school as defined under s. 345.60, Stats., or treatment services, or combination, for alleviation of identified chemical abuse or dependency problems.

(14) "Released" means that a revocation, suspension or cancellation license action has been withdrawn because of an appeal, reopening or a vacation of a conviction or a finding that the license action, as ordered by the department or court, was in error or inappropriate.

(15) "Review board" or "board" means any board established by the department to provide advisory review of a licensing decision based on the special examination referred to in s. 343.16 (2) (b), Stats.

(16) "Review unit" means the alcohol and other drug review unit in the department's division of motor vehicles.

(17) "Treatment facility in another state" means a facility in another state which provides assessment services or driver safety plan programs for persons who are nonresidents or residents temporarily residing in another state whose arrest or offense occurred on or after March 1, 1987, and which meets the program or facility requirements of that state.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. (1), renum. (2) to (9) to be (1) to (8), cr. (9), Register, March, 1984, No. 339, eff. 4-1-84; am. (2), (7), (12) and (16), renum. (17) to be (5m) and am., Register, September, 1986, No. 369, eff. 10-1-86; emerg. renum. (1) and (2) and am., cr. (1), am. (7), eff. 4-24-87; am. (1), (7) and (12), cr. (17), Register, May, 1988, No. 389, eff. 6-1-88.

Trans 107.03 Information sources. The department shall identify persons who have chemical abuse or dependency problems through:

- (1) Any and all operator's license applications.
- (2) Medical information which the department has requested under the provisions of s. 343.06 (4) or 343.16 (2) (a), Stats.,
- (3) Reports or information on driver condition or behavior,
- (4) Interviews,
- (5) Accident reports with chemical involvement,
- (6) Court ordered assessment reports in accordance with s. 343.30 (1q) or 343.305, Stats.,
- (7) County department assessment and driver safety plan final reports,
- (8) Driving records with chemically involved entries, or
- (9) Department ordered assessment reports as a result of arrests in accordance with s. 343.16 (2), Stats.
- (10) Assessment, driver safety plan, and reports from a treatment facility in another state.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; renum. (1) to be (intro.), (1) (a) to (i) to be (1) to (9) and am. (4), Register, March, 1984, No. 339, eff. 4-1-84; am. (7), Register, September, 1986, No. 369, eff. 10-1-86; emerg. cr. (10), eff. 4-24-87; am. (6), cr. (10), Register, May, 1988, No. 389, eff. 6-1-88; correction in (2) made under s. 13.93 (2m) (b) 7 Stats., Register, May, 1988, No. 389.

Trans 107.04 Information to be considered in licensing actions. (1) The following information shall be considered in taking administrative licensing action:

(a) Medical, assessment, driver safety plan, driver safety plan final reports, or combination of, with information on:

1. Hospitalization for chemical abuse or dependency.
2. Outpatient treatment for chemical abuse or dependency.
3. Participation in self-help groups for chemical abuse or dependency.

4. Use of control agents, such as antabuse or methadone.
5. Physician treatment for chemical abuse or dependency.

(b) An interview by a department representative documenting the effects of chemical use on a person's social or economic functioning in terms of:

1. Employment status.
2. Physical condition.
3. Family situation.
4. Social environment.
5. Chemical use habits.

(c) Driving records, including reports of:

1. Accidents involving chemical use.
2. Traffic convictions involving chemical use.

3. Arrests for chemically related violations, for example, pending charges for OWI. Once the charge has been disposed of by a court, for example, convicted, dismissed, amended or withdrawn, the arrest information will no longer be considered in taking licensing action under s. Trans 107.08 (1) (b), (c), (d), (e), and (f).

4. Chemically related charges dismissed, vacated, appealed, reduced or amended to lesser charges when the department has information, such as a medical or assessment report, on file.

(d) Review board recommendations, if any.

(e) Information from other sources about a person's physical and mental health, as affected by chemical use, and other medical problems which might interfere with reasonable and ordinary control over a motor vehicle.

(2) Some or all of the information described in sub. (1) shall be included in medical, assessment, driver safety plan, final report, or combination of, reports required under this chapter.

(3) Persons may be required to furnish additional medical or assessment reports, or combination of, if the department determines that the information available is not adequate to make a licensing decision.

(4) Persons may be referred for assessment as described in s. Trans 107.06.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; am. (1) (b) (intro.) and (3), Register, March, 1984, No. 339, eff. 4-1-84; am. (1) (a) (intro.), (b) (intro.), (c) (intro.) and 4., Register, September, 1986, No. 369, eff. 10-1-86.

Trans 107.05 Medical reports. (1) As authorized by s. 343.06 (4), Stats., the department shall require a hospitalization certificate signed by the superintendent of the treatment facility or authorized representative, or attending physician, when there is information that a person has received inpatient treatment for chemical abuse or dependency within the past 2 years.

(2) All physician medical reports under s. 343.16 (2), Stats., shall be based on an examination by a physician within the previous 3 months.

Note: Forms MVD 3030, 3030M and 3113.

(3) Medical reports under 343.16 (2), Stats., shall be submitted within 30 days from license application, or department request, unless an extension has been granted by the department.

(4) Failure to submit the medical examination report as required under s. 343.16, Stats., and this chapter shall result in cancellation of all operating privileges, and denial of all licenses applied for, in accordance with ss. 343.25 (7) and 343.06 (4), Stats.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Trans 107.06 Assessment referrals and interviews. (1) **WHEN INTERVIEW REQUIRED.** Except under the circumstances described in s. Trans 107.08 (2) (a) to (c), an interview shall be scheduled when a person is identified by a source described in s. Trans 107.03 as possibly having a chemical abuse or dependency problem and this is the first time the department has received any information that this person may have a problem.

(2) **WHEN ASSESSMENT REQUIRED AFTER INTERVIEW.** The interview consists of a meeting with a department representative which involves:

(a) Discussion of the 5 life style categories listed in s. Trans 107.04 (1)

(b).

(b) Administration of a screening test for alcohol or controlled substance use.

Note: The dependency screening test is form MVD 3259.

(c) Adding the total number of traits identified in the 5 life style categories to the screening test score. Each of the 5 categories have identifiable traits which are characteristic of persons addicted to excessive use of chemicals in varying degrees. The degree can be based upon the length and number of occurrences and whether the condition is gradually becoming worse or improving. Each trait identified as positive has a point value of one. A person whose interview responses indicate a 5 or more point total shall be required to obtain an assessment. The person shall be referred to a county department for the assessment.

(3) **IMMEDIATE ASSESSMENT REFERRAL.** A person shall be referred for assessment without the interview described in sub. (2) when:

(a) The department has information that a person has had 2 OWI arrests within 12 months.

(b) A person has one OWI arrest within the past 12 months and the department has an assessment, driver safety plan final report, medical, or combination of, reports that are chemically related on file within the past 2 years.

(c) A person has been identified from one or more sources described in s. Trans 107.03 as possibly having a chemical abuse or dependency problem and the department has an assessment, final report, medical, or combination of, reports that are chemically related on file within the past 2 years.

(d) A person has one OWI arrest within the past 12 months, and the person has had 2 OWI convictions or implied consent revocations within the past 2 years.

(e) The department receives a medical report indicating a possible chemical use problem and the person is not currently being treated for the chemical use problem.

(f) The department receives notice of an OWI conviction in another jurisdiction for an offense which if committed in this state would have been cause for revocation or suspension under s. 343.30 (1q) and the person has not completed or is not currently participating in a rehabilitation or driver safety plan or any similar plan in another jurisdiction.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; am. (3) (intro.) and (a), cr. (3) (f), Register, March, 1984, No. 339, eff. 4-1-84; emerg., am. (3) (f), eff. 1-31-86; am. (1) (intro.), (2) (intro.) and (c), (3) (b) and (3) (d) to (f), r. (1) (a) to (c), Register, September, 1986, No. 369, eff. 10-1-86.

Trans 107.07 Reporting procedures. (1) Assessments and assessment reporting procedures shall be those established by ch. HSS 62.

(2) Traffic safety school final report information forms shall be provided to the county department when documentation by the traffic safety school indicates a need for additional assessment which may require additional treatment not recommended at the time of the original assessment.

(3) Amended driver safety plans shall be accepted by the department within the period established by ss. 343.30 (1q) (d) and 343.305 (10) (d), Stats., and, when submitted to the department by the county department with documentation of the reason for changes in assessment findings or recommendations. As provided by ss. 343.30 (1q) (d) and 343.305 (10) (d), Stats., a driver safety plan, including amendments and followup, cannot be for more than one year from the beginning date to the ending date of the plan.

(4) If the department does not receive a report of compliance with the order to obtain an assessment within 60 days from the date of OWI conviction or revocation for improper refusal or if the department receives information that the court has not ordered an assessment, the department shall order an assessment under s. 343.30 (1q) (f), or 343.305 (10) (f), Stats., and the person shall have 30 days to provide notification of compliance with assessment order or the license shall be canceled, denied or suspended as provided in s. Trans 107.08 (1).

(5) When a department ordered assessment under s. Trans 107.06 has not been completed by the date of the OWI conviction, and the court subsequently orders an assessment, the person shall not be required to comply with the department ordered assessment. All previous driver safety plans shall be waived when a new department or court ordered assessment has been completed and a driver safety plan developed.

(6) If convicted of an amended charge, or the charge is dismissed, appealed or vacated prior to completion of a department or court ordered assessment, compliance with the assessment order shall not be required. If the person has already completed an assessment, the person shall be required to comply with the driver safety plan if the assessment findings meet the criteria for license denial or cancellation under s. Trans 107.08 (1) (g).

(a) Whether the person is in compliance with the driver safety plan, and

(b) Whether the driver safety plan is appropriate.

(4) Within 10 days of receipt of the written request for review under ss. 343.30 (1q) (d) and 343.305 (10) (d), Stats., the department shall review the assessment or driver safety plan or amended driver safety plan. The driver safety plan shall be considered inappropriate if:

(a) The diagnostic level of symptoms identified on the assessment report of physiological, behavioral, psychological, attitudinal, or combination of, do not support the assessment findings recommended by the assessor on the forms provided by the department of health and social services as follows:

1. When one or more level 1 indicators of physiological dependency from the major criteria in track I (indicators 32-35) are present, AN ASSESSMENT FINDING OF ALCOHOL DEPENDENCY IS APPROPRIATE, or

2. When one or more level 1 indicators of psychological dependency from the major criteria in track II (indicators 28 and 29) are present along with any 3 or more level 2 indicators, AN ASSESSMENT FINDING OF ALCOHOL DEPENDENCY IS APPROPRIATE, or

3. When 5 or more level 2 indicators of psychological, attitudinal and behavioral indicators from the minor criteria in track II are present but overall evidence is not conclusive, AN ASSESSMENT FINDING OF SUSPECTED ALCOHOL DEPENDENCY IS APPROPRIATE, or

4. When there is insufficient evidence for a progressive pattern of abusive drinking (that is, in the absence of level 1 indicators, fewer than 5 level 2 indicators, or any number of level 3 indicators) or the only evidence was a conviction for OWI, AN ASSESSMENT FINDING OF IRRESPONSIBLE USE OF ALCOHOL IS APPROPRIATE.

Note: Department of Health and Social Services form DSC 753.

(b) The diagnostic levels support the findings as described in sub. (1), but the findings do not support the driver safety plan as follows:

1. A finding of irresponsible use does not support in-patient treatment or extensive out-patient treatment.

2. A finding of suspected dependency does not support in-patient treatment.

3. A finding of irresponsible use does support educational program recommendations.

4. A finding of suspected alcohol dependency does support out-patient treatment or combination of education and out-patient treatment.

5. A finding of chemical dependency does support in-patient treatment, extensive outpatient treatment, or combination of treatment.

(c) The noncompliance was based on non-payment of treatment fees.

(5) When the driver safety plan is found to be appropriate, the suspension shall remain in effect until notification from a county department

that the person is complying with the driver safety plan received by the department and the person has paid the reinstatement fee(s) required by s. 343.21 (1) (j), Stats.

(6) When the driver safety plan is found to be inappropriate or the person is found to be in compliance with the driver safety plan, the suspension shall be released under the provisions of s. 343.39 (1) (c) and (2), Stats., and the fee specified in s. 343.21 (1) (j), Stats., shall not be charged for reinstatement of the license, under the provisions of s. 343.30 (1q) (d) or 343.305 (10) (d), Stats., and

(7) When the driver safety plan is found to be inappropriate, the person shall be requested to furnish the department with another assessment and driver safety plan within 30 days under s. 343.30 (1q) (d), or 343.305 (10) (d), Stats.

(8) Under s. 343.30 (1q) (d) or 343.305 (10) (d), Stats., the department shall grant a delay in the review decision at the written request of the person seeking the review.

(9) Driver safety plans recommending treatment in other states are acceptable if approved by the 51.42 board.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; am. (5), Register, March, 1984, No. 339, eff. 4-1-84; am. (1), (3) (a), (5), (8) and (9), Register, September, 1986, No. 369, eff. 10-1-86; am. (1), (4) (intro.), (6) to (8), Register, May, 1988, No. 389, eff. 6-1-88.

Trans 107.10 Review boards. (1) If the decision to deny or cancel operating privileges is based in part on the results of a special examination and a medical report involving chemical abuse or dependency under s. 343.16 (2), Stats., a person may request an appearance before a review board, or a review by a board of the information on file with the department.

(2) After receiving the recommendation of a review board, the department shall notify the person of the department's decision within 10 working days after the person's appearance before the review board. The notice shall include the review board's recommendations and department's decision and shall state the reasons for the decision.

Note: The department's decision to cancel, deny, suspend or revoke licenses under this chapter are subject to judicial review, in accordance with s. 343.40., Stats.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Trans 107.11 Effective dates, transition provisions, and miscellaneous provisions. (1) The effective date of all departmental suspensions or revocations under this chapter shall be the date the order was mailed, except if the person is currently under suspension or revocation, the effective date shall be the date the license was surrendered for the previous action, or the date of the conviction causing the new suspensions or revocation, whichever is later.

(2) When the offense or arrest date is March 1, 1987 or after, persons shall be considered subject to this chapter. Offenses or arrests which occurred prior to March 1, 1987, regardless of conviction date, shall be considered subject to provisions in effect prior to March 1, 1987, unless otherwise ordered by the court.

(3) For the purpose of counting the number of refusal revocations, OWI convictions, or arrests, all such convictions, refusal revocations, or

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arrests prior to, on, or after May 1, 1982 shall be counted by the department using the date of offense or arrest.

(4) Reductions in periods of revocation or suspension under ss. 343.30 (1q) (h) and 343.305 (10) (g) shall be made by the department as provided in ss. 343.30 (1q) (f) and 343.305 (10) (f), Stats.

(5) The reinstatement date for suspensions for noncompliance with assessment or a driver safety plan under ss. 343.30 (1q) (d) and 343.305 (10) (d), Stats., shall be the date the reinstatement fee is paid or the date the department receives the notice of compliance, whichever is later.

(6) Implied consent refusals and OWI convictions from the same incident shall be counted as one.

(7) As authorized by ss. 343.30 (1q) (b) 1. and 346.63 (1) (c), Stats., if 2 citations are issued for the same arrest incident under s. 346.63 (1) (a) and (b), (2) (a) 1. and 2. or 2 citations or complaints for s. 940.25 (1) (a) and (b) or 940.09 (1) (a) and (b), Stats., they shall be considered as one arrest incident under this chapter.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; am. (3), Register, March, 1984, No. 339, eff. 4-1-84; am. (3), Register, September, 1986, No. 369, eff. 10-1-86; am. (2), r. (3), renum. (4) to (8) to be (3) to (7) and am. (3) to (5), Register, May, 1988, No. 389, eff. 6-1-88.