

## Chapter HFS 62

## ASSESSMENT OF DRIVERS WITH ALCOHOL OR CONTROLLED SUBSTANCE PROBLEMS

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Note: Chapter HSS 62 was renumbered Chapter HFS 62 under s. 13.93 (2m) (b) 1., Stats., Register, July, 1996, No. 487.

### HFS 62.01 Introduction. (1) PURPOSE AND AUTHORITY. (a)

This chapter establishes standards for the way assessments are done and driver safety plans are developed for and completed by motor vehicle drivers who are ordered by courts or the state department of transportation to be examined for their use of alcohol or controlled substances, to have an individualized driver safety plan developed based on that examination, and to carry out the driver safety plan. Conflict of interest guidelines for facilities which do assessment and driver safety planning are included in this chapter. The authority for promulgating this chapter is found in ss. 343.30 (1q) (c) and 343.305 (9) (c), Stats.

(b) These standards and guidelines are intended to benefit courts and the department of transportation in their use of services to improve driver safety; the department of transportation in the exercise of its drivers' licensing review authority; program providers and facilities doing assessments and developing driver safety plans by assuring the quality and credibility of their services; drivers who are linked-up with programs and services to help them overcome alcohol or controlled substance problems and who may choose from among providers of programs which the assessment has determined that they need in order to regain safe driving capabilities; and the general public by the screening of persons whose use of chemicals creates a threat to public safety.

(2) APPLICABILITY. This chapter applies to those public treatment facilities approved by the department under s. 51.45 (8), Stats., which provide assessment or driver safety plan services by order of either a court or the state department of transportation to motor vehicle drivers who are suspected of having or are found to have an alcohol or controlled substance problem. The chapter applies also to providers of programs included in driver safety plans.

### (3) DEFINITIONS. As used in this chapter:

(a) "Alcohol and other drug abuse professional" means an individual who is an alcoholism counselor, drug counselor, or alcohol and other drug abuse counselor certified by the Wisconsin alcoholism and drug abuse counselor certification board, or any program personnel specified in s. HSS 61.06 (1) to (14) who have training and experience in prevention and treatment of dependency and irresponsible use of alcohol and controlled substances.

(b) "Assessment" means an examination of a person's use of alcohol or controlled substances through a process of classifying a client's problems in terms of a standardized procedure and nomenclature, and the development of a driver safety plan for the person based on the findings of that examination.

(c) "Assessment facility" means an alcohol and drug abuse approved public treatment facility, as defined in s. 51.45 (2) (c), Stats., which is also approved for one or more programs under ss. HSS 61.54 to 61.57 and 61.59 to 61.68 and is designated by a board to conduct assessments.

(d) "Assessor" means an alcohol and other drug abuse professional in a department-approved public treatment facility who is qualified under s. HFS 62.03 (1) to conduct assessments.

(e) "Board" means the community board established under s. 46.23 or 51.42, Stats., which is responsible for each county's provision of alcohol and drug abuse services under ss. 51.42 and 51.45, Stats.

(f) "Board staff" means the program director of the board and staff members designated by the program director.

(g) "Client" means a driver of a motor vehicle who is ordered by a court or by the state department of transportation under s. 343.16 (2) (a), 343.30 (1q) or 343.305 (9), Stats., to undergo assessment and development of a driver safety plan.

(h) "Controlled substance" has the meaning prescribed in s. 161.01 (4), Stats.

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

(j) "Dependency" means use of alcohol or controlled substances, or both, to such an extent that it interferes with a person's physical or mental health or social or economic functioning.

(k) "Designated coordinator" means the person named by a board to carry out the board's responsibilities under this chapter.

(L) "Driver safety plan" means an individualized plan based on assessment findings which specifies an approved program of treatment or traffic safety school, or a combination of these, directed toward alleviating identified irresponsible use or dependency problems.

(m) "IPID committee" means a committee of county agencies and organizations constituting a forum for the "interagency program for the intoxicated driver," with representation from the board, assessment facility, treatment programs, law enforcement agencies, public prosecutors, the judiciary, the county bar, the state department of transportation and group dynamics-traffic safety schools.

(n) "Irresponsible use" means use of alcohol or controlled substances, or both, which at the time of assessment does not show a dependency pattern but has affected or may affect safe driving capability.

(o) "Multiple-offense client" means a client who, within a period of 5 years, is arrested 2 or more times for intoxicated driving or receives 2 or more adverse findings under s. 343.305 (8), Stats., convictions under s. 346.63 (1), Stats., or a local ordinance in conformity with s. 346.63 (1), Stats., or convictions under ss. 346.63 (2), 940.09, or 940.25, Stats., or any combination of 2 or more of these.

(p) "Program provider" means a public or private treatment facility meeting alcohol and drug abuse program standards and approved by the department under s. 51.45 (8) (a) and (c), Stats., and ss. HSS 61.50 to 61.68; a traffic safety school approved by the department of transportation; or an out-of-state treatment facility authorized by the board staff.

(q) "Traffic safety school" means a school offering group dynamics, 12-hour defensive driving or general traffic safety instruction under s. 345.60, Stats., and having instructors certified by the department of transportation.

(r) "Treatment program" means an alcohol and drug abuse program approved by the department under ss. HSS 61.50 to 61.68,

or an equivalent program in another state authorized by a board and providing one or more of the types of care and services listed in ss. 51.42 (5) and (5m) and 51.45 (2) (g) and (7), Stats., directed toward promoting effective personal and social adjustment and functioning or ameliorating a client's dependency problem.

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84; am. (3) (p) and (r), Register, July, 1984, No. 343, eff. 8-1-84; correction in (3) (i) made under s. 13.93 (2m) (b) 6., Stats., Register, July, 1996, No. 487.

#### **HFS 62.02 Board responsibility for services. (1)**

**RESPONSIBILITIES.** The board shall be responsible for establishing and providing assessment and driver safety plan development for clients residing in a county under the board's responsibility, another state or referred by another board; providing treatment programs for county residents within the limits of available funding; determining whether the board staff or the board-approved agency will maintain all the client files on the assessment and driver safety plan, including final and related reports, and who will distribute the final report; authorizing treatment programs in other states; providing notice to the department of transportation whenever the board staff approves an extension on the 14 days for assessment; monitoring provision of assessment and treatment services to ensure compliance with this chapter; and furnishing required reports to clients, the department of transportation, and program providers which show compliance or noncompliance with assessment and with all plans other than those recommending only traffic safety schools.

**(2) DESIGNATED COORDINATOR.** (a) The board shall assign or contract for a person to be the designated coordinator for implementation of the board's responsibilities under sub. (1).

(b) The designated coordinator may organize an IPID committee which shall meet on a regular basis as determined by the committee.

(c) In collaboration with the IPID committee, if any, the designated coordinator shall conclude agreements with other agencies which cover:

1. Identification of liaison staff from the other IPID agencies and organizations;
2. Participation in program development and sharing of information;
3. Establishment of procedures for referrals and for tracking and reporting on clients;
4. Approval of treatment programs and traffic safety schools for clients with assessment findings of irresponsible use who are multiple-offense clients or have a documented extenuating factor, such as a language barrier, a hearing impairment or a developmental disability;
5. Approval of additional screening instruments used during assessment to avoid loss of reliability due to repetitive use on any client; and
6. Assurance of adherence to 42 CFR Part 2 and ch. HSS 92 on confidentiality of alcohol and drug abuse assessment and treatment records in accordance with s. 51.30 (4) (c), Stats.

(d) The designated coordinator shall provide or arrange for assistance and consultation to the courts which includes but is not limited to:

1. Identification of the location, phone number and costs for that board area's designated facility for performance of assessments for county and out-of-state residents;
2. Provision of information to the courts about that board area's assessment process, for the courts' oral explanation or use as handout material for the clients;
3. Ensuring that the court's order refers a Wisconsin client directly to a facility in the client's county of residence and refers an out-of-state client to the facility in the county of conviction or to a border county facility when this is more convenient for the client;
4. Consultation on the use of the court-ordered form; and

5. Explanation of the information contained in the reports under s. HFS 62.05, even though the court will not receive the reports related to the client that the court orders to assessment. The explanation shall include the board's or its approved agency's requirements concerning confidentiality, prohibition of redisclosure, and the need for client consent to release the reports or any updated reports whenever the court considers waiving assessment due to a client's prior participation in assessment or a driver safety plan or due to a voluntary assessment, compliance for an occupational license or a department of transportation referral under ss. 343.10 (2) (e), 343.16 (5) (a), 343.30 (1q) and 343.305 (10), Stats.

(e) The designated coordinator shall be knowledgeable about the sentencing procedure of each court in the board's geographic area and shall provide consultation to all assessment facilities and program providers on each court's practices.

(f) The designated coordinator shall obtain documentation from all assessment facilities and treatment program providers that they have established procedures for adequate service provision, notice to the client of the appeal process to the facility or board staff prior to submission to the department of transportation of any reports of noncompliance, smooth referral flow, specification that all reports are to be submitted to either board staff or the board-approved agency, client compliance monitoring through submission of the final report on completion or noncompliance, and timely response to court orders and department of transportation orders for clients to be assessed and driver safety plans developed.

(g) The designated coordinator shall assist the board in ensuring that board-operated or board-contracted assessment facility and program provider costs and client liability for fees are determined as specified under ch. HSS 1, except that, as specified in s. 46.03 (18) (f), Stats., the client remains fully liable for the fee for the assessment and any traffic safety school fee.

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84; am. (1), r and rec. (2), Register, July, 1996, No. 487, eff. 8-1-96.

**HFS 62.03 Assessment standards.** Assessments shall be conducted in accordance with ss. HSS 61.52 (7) (c) and HFS 62.07 to determine the client's driver safety needs and to permit development of a plan to address those needs. In addition:

(1) Assessments shall be performed by alcohol and other drug abuse professionals employed by public treatment facilities defined in s. 51.45 (2) (c), Stats., which are designated by boards to perform assessments, and who have successfully completed assessment training specified in s. HFS 62.06, and show competency in assessment skills as evidenced through regular supervisory evaluations.

(2) (a) The principal method for assessment shall be a personal interview with the client to make a finding about the extent of the problem with alcohol or controlled substance use. The assessment may also make use of information provided by other persons, review of relevant records or reports on the client, and additional information-gathering measures found useful in the particular case.

(b) The assessment interview shall include application of the department's instrument for alcohol and other impairing drugs or a controlled substances' assessment. These assessment instruments, such as the "Wisconsin Assessment of the Impaired Driver (WAID)," used by assessors, shall incorporate standard criteria for substantiating findings and provide uniform nomenclature for reporting on state forms. The designated coordinator shall periodically monitor assessment reports in accordance with the federal confidentiality regulations, 42 CFR Part 2, in order to ensure appropriate application of the uniform instruments; and

(c) The assessment interview may include additional information-gathering instruments and tests deemed appropriate by the assessment facility and approved by the IPID committee.

(3) An assessment report shall show:

- (a) The assessment finding based on application of the required instrument;
- (b) The standard criteria which substantiate the finding; and
- (c) The instruments applied during the assessment.

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84; r. and rec. (1), (2), Register, July, 1996, No. 487, eff. 8-1-96.

**HFS 62.04 Driver safety plan standards.** A driver safety plan shall be developed for every client ordered for assessment. Every plan shall include the assessor's recommendation for driver licensing action.

(1) The driver safety plan shall be supported by the assessment findings and shall recommend a program of treatment or traffic safety school or a combination of programs.

(2) The following are appropriate driver safety plan programs for specified assessment findings:

ASSESSMENT FINDINGS	PROGRAM RECOMMENDATION
(a) Irresponsible use of alcohol.	Group dynamics-traffic safety school.
(b) Irresponsible controlled substance use.	Group dynamics-traffic safety school.
(c) Suspected alcohol dependency.	Treatment programs which do not include inpatient treatment.
(d) Suspected controlled substance dependency.	Treatment programs.
(e) Alcohol dependency.	Treatment programs.
(f) Alcohol dependency in remission.	Treatment programs.

(3) The following are allowable exceptions to sub. (2) for multiple-offense clients who have already attended group dynamics-traffic safety school, for clients with extenuating factors when the programs are approved by the IPID committee under s. HFS 62.02 (2) (b) 4., and for out-of-state clients:

ASSESSMENT FINDINGS	PROGRAM RECOMMENDATION
(a) Irresponsible use of alcohol.	Traffic safety schools, other than group dynamics, or treatment programs, or both.
(b) Irresponsible controlled substance use.	Traffic safety schools, other than group dynamics, or treatment programs, or both.

(4) In addition to sub. (2) or (3), driver safety plans may include:

(a) Group dynamics-traffic safety school when appropriate for clients with assessment findings listed in sub. (2) (c) and (d);

(b) Traffic safety school, other than a group dynamics-traffic safety school, when appropriate for clients with assessment findings listed in sub. (2) (c) to (f);

(c) Follow-up interviews which may result in modification of the assessment findings, recommendations for additional driver safety plan programming and amendment of the plans for:

1. Clients recommended for reassessment by a traffic safety school instructor or program provider; and

2. Certain clients whose problems need to be reviewed in relation to achievement of driver safety because of concern about the validity of the client's acknowledgements at the time of assessment or about the adequacy of the client's recommended program; and

(d) Short-term treatment counseling or group participation for clients with a borderline irresponsible use finding supported by assessment criteria.

(5) Driver safety plans may include a recommendation for suspension or license denial until plan completion when there is documented reason to believe the client will not participate in the driver safety plan to completion.

(6) An appropriate program or combination of programs to improve driver safety shall be recommended in the driver safety plan, but the client shall select the program provider from among all appropriate providers available in the client's geographical area as specified in s. HFS 62.07.

(7) The driver safety plan shall designate a plan termination date which is consistent with the plan and no longer than one year from the date of assessment or the beginning date of the program when indicated in the plan.

(8) When a driver safety plan has been prepared, the client shall be informed that:

(a) The assessment findings and driver safety plan to be distributed include the same information as the copies received and signed by the client;

(b) If the client refuses to release or consent to the plan, he or she may submit an appeal to the assessment facility or board staff as specified under s. HFS 62.05 (2) (f); and

(c) Satisfactory compliance requires that registration with the program provider or making the first appointment with the provider shall take place within 3 working days after the assessment and that actual participation in the program shall occur within one month or at the first available program opening, whichever comes first. Failure to register with the program provider within 3 working days shall be considered sufficient reason for filing a non-compliance report.

(9) When a client is referred to a driver safety program:

(a) The program provider shall receive a copy of the assessment findings and the recommended driver safety plan from the assessment facility;

(b) The program provider shall agree to comply with prescribed reporting requirements; and

(c) If the driver safety program is a treatment program, that program shall be notified:

1. 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.;

2. Regarding the process by which the driver safety plan may be updated or amended when necessary; and

3. That use of self-help groups such as alcoholics anonymous, narcotics anonymous or women for sobriety is permitted to supplement the individualized treatment plan services for clients with assessment findings listed in sub. (2) (d) to (f). Unless documentable with consent of the self-help group, reporting a client's participation in this activity is not mandatory due to the confidential nature of these groups.

Note: The individualized treatment plan required by s. 51.45 (9) (d), Stats., which is developed jointly by the client and the treatment program, is prepared only when a client is evaluated by the treatment program under s. 51.42 (5) (b), Stats.

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84.

**HFS 62.05 Reporting requirements.** (1) Standard reporting forms, which include provisions for consent by client signature for the release of information, are available from the department of transportation and shall be used for routine reporting on all clients. Other forms may be developed and used by IPID committees or the designated coordinators to meet special needs.

(1m) The board staff or the board-approved agency shall submit assessment reports, driver safety plans, final reports related to completion of or non-compliance with treatment, and related reports involving treatment to the department of transportation, the program provider, and the client.

(2) Board-operated or board-contracted facilities shall:

(a) Obtain a unique client number from the board and follow the board's required registration procedures specified in information system manuals, handbooks and policy directives for each court-ordered or department of transportation-ordered assessment client;

(b) Submit the required report on assessment findings and the driver safety plan to the board staff or the board-approved agency, the department of transportation, the program provider and the client within 14 days following the court order or department of transportation order for assessment. Based on a request by the assessment facility and client, the board staff may extend the period not more than 20 working days. Written notice for any extension shall be submitted by the board staff to the department of transportation.

(c) Ensure that the report on assessment findings and the driver safety plan are sent to, and restricted for use only with, the parties listed in par. (b);

(d) Ensure that the report on client driver safety plan completion or noncompliance is submitted to, and restricted for use only with, the parties listed in par. (b);

(e) Use uniform nomenclature to report client information on standard forms; and

(f) Notify the client whenever a report of non-compliance is being considered. Notice to the client shall occur at least one week before any distribution of the non-compliance report to the parties listed in par. (b).

1. The client shall be told in what way he or she did not comply with the assessment or driver safety plan.

2. The client shall be informed of the facility and board intoxicated driver appeal process steps for which he or she may be eligible.

3. The local appeal steps shall be based on the board's intoxicated driver appeal policy guidelines which are in addition to the board's existing client rights and grievance procedures under ss. HFS 61.11 to 61.13.

(3) The traffic safety school shall submit required reports for completion or non-compliance to the department of transportation, the board staff or the board-approved agency and the client. The report's use shall be restricted to these parties.

(4) All other driver safety plan program providers shall prepare the final report or submit information on client completion of or non-compliance with the plan to the board staff or the approved agency for their completion of the final report. Copies of the final report for the department of transportation, the board staff or the board-approved agency, the program provider and the client shall be distributed in accordance with established local procedures. The report's use shall be restricted to these parties.

(5) Release of information and restrictions on recipients of the information under subs. (1), (2) and (4), shall be in accordance with s. HSS 61.52 (4).

(6) Non-compliance with assessment includes but is not limited to the following situations:

(a) Failure of the client to appear for assessment;

(b) Failure of the client to authorize release of any information gained during the assessment interview;

(c) Failure of the client to allow any collateral contacts to verify unclear areas, thus preventing completion of a competent assessment; or

(d) Failure of the client to pay for the assessment.

(7) Non-compliance with the driver safety plan means not following or not completing the plan, including but not limited to the following situations:

(a) Failure of the client to give written consent to the driver safety plan;

(b) Failure of the client to pay the driver safety plan fee required under s. 46.03(18)(f), Stats., if the person is found to have the ability to pay the fee.

(c) Failure of the client to participate promptly in accordance with s. HFS 62.04 (8) (c) in the driver safety plan programs;

(d) Failure of the client to accept driver safety plan programs by not attending or not cooperating; or

(e) Failure of the client to show reasonable progress in completing the driver safety plan according to the goals set out in the individualized treatment plan.

Note: Reports of non-compliance for failure to complete assessment, pay assessment fee or to comply with the driver safety plan will result in suspension of the client's operating privilege by the department of transportation until the client is in compliance. For notice of the indefinite suspension and the client's rights to review and reinstatement, see ch. Trans 107.

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84; renum. (intro.), (1), (7) (b) to (d) to be (1), (1m), (7) (c) to (e) and am. (1), am (2) (a) to (e), (f) 3., cr. (7) (b), Register, July, 1996, No. 487, eff. 8-1-96.

**HFS 62.06 Training requirements.** (1) GENERAL REQUIREMENT. All assessment providers and driver safety plan program providers shall receive training from their respective agencies for the routine processing of court-ordered and department of transportation-ordered clients. Information may be requested from the department of transportation.

(2) ASSESSMENT STAFF TRAINING. Facilities providing assessment shall arrange for assessment training for all assessment personnel. With assistance from the designated coordinator, assessment personnel shall be oriented to local procedures for clients, including identification of approved program providers.

(3) PROGRAM PROVIDER TRAINING. Driver safety plan program providers shall be familiar with uniform reporting requirements and shall be responsible for providing the training necessary for competent service provision. Board-operated and board-contracted providers may request assistance from the designated coordinator.

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84; renum. (intro.), (1), (2) to be (1) to (3) and am., Register, July, 1996, No. 487, eff. 8-1-96.

**HFS 62.07 Conflict of interest guidelines.** The conflict of interest guidelines in this section apply to approved public treatment facilities providing assessment and driver safety programs under this chapter.

(1) CLIENT CHOICE OF PROGRAM PROVIDER. Clients shall be allowed to select providers of the programs included in their driver safety plans, based on the following considerations:

(a) The client shall be shown a list of all county-approved public and private program providers in the board area, as well as other county-approved program providers close to where the client lives, who offer programs required to fulfill the driver safety plan;

(b) The client shall be informed about the rates charged for a program provider's services and whether the client is liable for the full cost of the services or may be eligible as a board client for reduced costs according to his or her ability to pay;

(c) The client shall be told that if he or she elects to receive services from an approved provider other than the client's board-operated or board-contracted program provider, the client is responsible for the full cost of the services; and

(d) The client shall agree to be responsible for the cost or the cost based on ability to pay of the programs received from the provider of his or her choice.

(2) SEPARATION OF ASSESSMENT AND PROGRAM PROVISION. (a) The facility that assesses a client may not also provide the client with the program or programs called for in the client's driver safety plan unless the designated coordinator has approved the facility to do both in accordance with the following criteria:

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; and

3. The board is not forced to dismantle existing programming or fire personnel to effect separate facilities.

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

(3) **CLIENT CHOICE ACKNOWLEDGMENT.** The client shall be asked to acknowledge in writing that he or she has been given information about all available and appropriate providers of driver safety programs and about the provisions of subs. (1) and (2) before selecting a program provider. This acknowledgment shall be kept in the client's file.

(4) **CONFLICT OF INTEREST MONITORING.** Boards shall monitor assessment facility compliance with this section and may with-

hold or withdraw contracts based on documented findings of conflict of interest.

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84; am. (1) (a), (2) (a) (intro.), Register, July, 1996, No. 487, eff. 8-1-96.

**HFS 62.08 Allocation of funds.** The department shall distribute emergency funds authorized under s.20.435(7)(hy), Stats., and surcharge revenues authorized under ss. 20.435(7)(hz) and 346.655, Stats., by an allocation process developed in consultation with county representatives.

History: Cr. Register, July, 1996, No. 487, eff. 8-1-96.

**HFS 62.09 Enforcement. (1) COMPLIANCE REQUIRED.** All board-operated and board-contracted assessment providers and program providers shall comply with this chapter.

(2) **COMPLIANCE REQUIRED FOR OTHER PROGRAM PROVIDERS.** All other program providers under this chapter shall comply with this chapter's relevant standards and all other applicable state statutes and administrative rules.

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84; renum. from HSS 62.08 and am. (1), Register, July, 1996, No. 487, eff. 8-1-96.

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