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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 (1) (d), 343.16 (5), 343.25 (4) and (7), 343.30 (1q) (c), (d), (f), 343.305 (10) (c), (d), (em), and (f), 343.32 (2) (e), 343.40, 346.63 (1) and (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 forms MV 3304 course completion certificate, MV3521 student enrollment confirmation, MV 3141 driver behavior report, MV 3630 assessment of the problem drinker, MV 3631 driver safety plan final report, MV 3632 court order for intoxicated driver assessment and driver safety plan, MV 3633 driver safety plan order, MV 3634 order for assessment and driver safety plan report, MV 3635 assessment and driver safety plan status report, MV 3644 medical exam report, and MV 3649 Wisconsin assessment of the impaired driver (WAID).

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; am. (1), Register, June, 1993, No. 450, eff. 7-1-93.

Trans 107.02 Definitions. The words and phrases defined in ss. 340.01 and 343.01, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) "Assessment" means a voluntary or ordered examination of the person's use of chemicals and development of a driver safety plan for the person by an approved public treatment facility as defined in s. 51.45 (2) (c), Stats., or as provided by a program 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. DHS 62, and instructions of the department of health services.

(3) "Chemical abuse" means the use of alcohol or other drugs, prescription or nonprescription, which may adversely affect driving ability. It includes both irresponsible use and borderline irresponsible use of alcohol or other drugs.

(4) "Chemical dependency" means dependence on alcohol, a controlled substance, other drugs, or any combination thereof 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. 961.01 (4), Stats.

(5m) "County department" means the community services program established under s. 51.42, Stats., or its approved agency, or the county department of human services 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) "Driver safety plan" means:

(a) For Wisconsin residents, an individualized plan of education or treatment, or both, based on an assessment referral which specifies a traffic safety school defined under s. 345.60, Stats., or treatment services, or a combination thereof, for alleviation of identified chemical use, abuse or dependency problems.

(b) For nonresidents or residents temporarily residing in another state, an individualized plan under par. (a) or a program of education or treatment, or both, which satisfies the requirements of that state.

(7) "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.

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

(9) "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.

(10) "OWI" or "operating while intoxicated" means any offense for which a conviction, revocation or suspension resulting therefrom may be counted under s. 343.307 (1), Stats.

(11) "Program in another state" means a program or facility in another state which examines persons for chemical abuse or dependency levels and recommends individualized plans or programs of education or treatment, or both, for persons who are nonresidents or residents temporarily residing in another state, which meets the program and facility requirements of that state.

(12) "Refusal" means refusing to submit to chemical testing upon request of a law enforcement officer, pursuant to s. 343.305 (3) (a), Stats., or a local ordinance or law of a federally recognized American Indian tribe or band in this state in conformity therewith, and no request for a court refusal hearing, or an adverse finding in an implied consent hearing.

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

(14) "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.

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

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; am. (7) (b) and (17), Register, January, 1991, No. 421, eff. 2-1-91; am. (intro.), (1), (3), (4) and (5m), r. (6), (12) and (13), renum. (7) to (11) and (14) to (17) to be (6), (12), (7) to (9), (13) to (15) and (11) and am. (6) (a) and (b), (8) and (11) to (13), cr. (10), Register,

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June, 1993, No. 450, eff. 7-1-93; correction in (2) and (5) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1996, No. 492; **corrections in (2) made under s. 13.92 (4) (b) 6. and 7., Stats.**

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 (1) (d) or 343.16 (5), Stats.,
- (3) Reports or information on driver condition or behavior,
- (4) Accident reports with chemical involvement,
- (5) Court ordered assessment reports in accordance with s. 343.30 (1q) or 343.305, Stats.,
- (6) Assessment reports submitted in response to a department order issued pursuant to s. 343.16 (5), Stats.,
- (7) Voluntary assessment reports submitted pursuant to s. 343.30 (1q) (c) 1m., Stats.,
- (8) County department assessment and driver safety plan final reports,
- (9) Assessments, driver safety plans, or reports from a program in another state, or
- (10) Driving records with chemically involved entries.

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; am. (2) and (10), renum. (7) and (8) to be (9) and (11) and am. (11), cr. (7) and (8), r. (9), Register, June 1993, No. 450, eff. 7-1-93; r. (4), renum. (5) to (11) to be (4) to (10), Register, September, 1996, No. 489, eff. 10-1-96.

Trans 107.04 Information to be considered in licensing actions. (1) The following information shall be considered in taking administrative licensing action under s. 343.06 (1) (d), 343.16 (5) or (6), or 343.25 (7), Stats.:

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

1. Hospitalization for chemical abuse or dependency.
2. Outpatient or other 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) 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), (f) and (hm).
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.

(c) Review board recommendations, if any.

(d) 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 deter-

mines 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; am. (1) (intro.), (a) (intro.), 2. and (c) (3), Register, June, 1993, No. 450, eff. 7-1-93; r. (1) (b), renum. (1) (c) to (e) to be (1) (b) to (d), Register, September, 1996, No. 489, eff. 10-1-96.

Trans 107.05 Medical reports. (1) All physician medical reports under s. 343.16 (5), Stats., shall be based on an examination by a physician within the previous 3 months.

Note: Form MV3644 may be obtained upon request from the Division of Motor Vehicles, Bureau of Driver Services, P. O. Box 7918, Madison, Wisconsin 53707-7918, telephone (608) 266-2233.

(2) Medical reports under s. 343.16 (5), Stats., shall be submitted within 30 days from license application, or department request, unless an extension has been granted by the department.

(3) Failure to submit the medical examination report as required under s. 343.16 (5), Stats., and this chapter shall result in cancellation or denial of all operating privileges, in accordance with ss. 343.25 (7) and 343.06 (1) (d), Stats.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. (1), renum. (2) to (4) to be (1) to (3), Register, January, 1991, No. 421, eff. 2-1-91; am. Register, June, 1993, No. 450, eff. 7-1-93.

Trans 107.06 Assessment referral. A person shall be referred for assessment when:

(1) The person is identified by a source described in s. Trans 107.03 as possibly having a chemical abuse or dependency problem, unless the person is in treatment, does not require treatment, or has completed treatment since the identification.

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

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

(4) 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.

(5) A person has one OWI arrest within the past 12 months, and the person has had 2 OWIs within the past 2 years.

(6) 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.

(7) The department receives notice of an OWI 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), Stats., and the person has not completed or is not currently participating in a driver safety plan or any similar plan in another jurisdiction.

(8) In any case when an assessment is waived or is not ordered by a court but is required by law.

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; am. (3) (b), (d) and (f), cr. (3) (g), Register, June, 1993, No. 450, eff. 7-1-93; r. (1), (2), renum. (3) (intro.) to be (intro.) and am., cr. (1), renum. (3) (a) to (g) to be (2) to (8), Register, September, 1996, No. 489, eff. 10-1-96.

Trans 107.07 Reporting procedures. (1) Assessments and assessment reporting procedures shall be those established by ch. DHS 62. Standard department forms shall be used for all reports.

(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

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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 when submitted by the county department documenting the reason for changes in assessment findings or recommendations. Pursuant to ss. 343.30 (1q) (d) and 343.305 (10) (d), Stats., a driver safety plan shall include a termination date consistent with the plan which shall not extend beyond one year of the date of assessment or reassessment.

(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 an OWI 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 45 days to provide notification of compliance with assessment order or the person's operating privilege 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 voluntary, 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 operating privilege denial or cancellation under s. Trans 107.08 (1) (g).

(7) A report of noncompliance with a driver safety plan shall include the reason for noncompliance.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; am. (1) to (3), (5) and (6), r. (7), renum. (8) to be (7), Register, September, 1986, No. 369, eff. 10-1-86; am. (3) and (4), Register, May, 1988, No. 389, eff. 6-1-88; am. (3), (4) and (6), Register, June, 1993, No. 450, eff. 7-1-93; am. (1), Register, September, 1996, No. 489, eff. 10-1-96; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; **correction in (1) made under s. 13.92 (4) (b) 7., Stats.**

Trans 107.08 Licensing action. (1) DENIAL, CANCELLATION OR SUSPENSION. (a) When a hospitalization certificate shows inpatient treatment for chemical abuse or dependency and the person has not been absolutely or conditionally released from the institution, the operating privilege shall be denied or canceled until the conditions in sub. (2) (a) have been met.

(b) When a person has one OWI arrest in 12 months and there is an assessment report, final report, medical report, or combination of reports on file with the department within the previous 2 years identifying chemical abuse or dependency and recommending no further involvement with chemicals, the person shall be immediately referred for assessment and the person's operating privilege shall be denied or canceled until the conditions in sub. (2) (b) have been met.

(c) When a person has had 3 OWI arrests in 12 months, the person shall be immediately referred for assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2) (b) have been met.

(d) When a person has 2 OWI arrests in 12 months, and has had 2 OWI convictions or implied consent revocations within the past 2 years, the person shall be immediately referred for an assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2) (b) have been met.

(e) When a person has 2 OWI arrests in 12 months with an alcohol concentration of .20 or above in at least one of the arrests, and the person has had an OWI conviction or implied consent revocation within the past 2 years, the person shall be immediately referred for assessment and the person's operating privilege shall

be denied or canceled until the conditions in sub. (2) (b) have been met.

(f) When a person has 2 OWI arrests in 12 months with an alcohol concentration of .20 or above in at least one of the arrests, and there is an assessment report, driver safety plan final report, medical report, or combination of reports on file with the department within the past 2 years identifying possible chemical abuse or dependency, the person shall be referred for immediate assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2) (b) or (c) have been met.

(g) When the findings of an assessment, information from a medical report, other information in the file, or a combination thereof, indicate that the person's chemical dependency may affect his or her driving ability, the person's operating privilege shall be denied or canceled under s. 343.06 (1) (d), Stats., until the conditions in sub. (2) (b) or (c) have been met. For purposes of this paragraph, the types of information considered are those described in s. Trans 107.04.

Note: See s. Trans 107.08 (1) (L) regarding cancellation for noncompliance with a driver safety plan.

(h) When a person fails to obtain an assessment as directed by the department, comply with the recommended driver safety plan or submit the required medical report, the person's operating privilege shall be denied, canceled or suspended under s. 343.06 (1) (d) or 343.16 (5), Stats., until the department is notified of compliance.

(hm) When a person has an OWI arrest after an assessment and prior to completion of a driver plan, the person shall be considered in noncompliance by the department and the person's operating privilege shall be denied, cancelled or suspended.

(i) When a person fails to attend the interview scheduled according to s. Trans 107.06 (1), the person's operating privilege shall be denied or cancelled.

(j) Pursuant to s. 343.16 (5), 343.30 (1q) (c) 1m. or (d), or 343.305 (10) (d), Stats., the department shall suspend a person's operating privilege for noncompliance until such time as the person is eligible for reinstatement under sub. (2), and may not issue an occupational license to the person, under any of the following conditions:

1. The person fails to comply with a court ordered or department ordered assessment.

2. The person fails to timely pay an assessment fee resulting from a court ordered assessment or a driver safety plan fee, or an installment of either fee, except driver safety plan fees imposed as the result of a court ordered assessment dated on or before July 28, 1995.

3. The person fails to timely pay an assessment fee resulting from a department ordered or voluntary assessment or a driver safety plan, or any installment of any of these fees, and the person has been convicted of an offense for which assessment is mandatory, except driver safety plan fees imposed as the result of a court ordered assessment dated on or before July 28, 1995.

4. The person has an OWI arrest after an assessment and prior to completion of a driver safety plan.

5. The department receives a noncompliance report from a county department, a traffic safety school approved under s. 345.60, Stats., or a program in another state.

(k) The department shall cancel an occupational license and may not issue a license to any person who has 2 or more prior OWIs and who fails to comply with a driver safety plan.

Note: Authority: s. 343.10 (2) (e), Stats., eff. January 1, 1993.

(L) The department shall cancel the operating privilege of any person who meets the criteria of par. (g) and who fails to comply with a driver safety plan.

(m) The department shall deny, cancel or suspend the operating privilege of any person who has an OWI arrest after submitting to a voluntary assessment and prior to completion of the driver safety plan resulting from that assessment.

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(n) The department may not deny, cancel or suspend the operating privilege of a person who submits to a department ordered or voluntary assessment and who does not pay the assessment fee or driver safety plan fee, unless the person is convicted of an offense for which assessment and compliance with a driver safety plan is mandatory.

Note: After conviction, failure to pay assessment or driver safety plan fees will result in suspension under par. (j) 3.

(o) When the court or department has ordered an occupational license, but because of requirements in s. 343.10 (1), (2) (e), or (5) (a) 2., 343.30 (1q) (b), 343.305 (10) (b), 343.31 (3m) or 343.35 (1), Stats., or ch. Trans 117, the person is not eligible for licensing, the occupational license shall be denied.

(2) APPROVAL. If all other reasons for license denial, cancellation, revocation or suspension and related conditions for reinstatement are met, a person may be licensed when any of the following conditions are met:

(a) When the person has received inpatient treatment and the hospitalization certificate shows satisfactory release, or there is verification of participation or satisfactory completion in another treatment program approved under s. 51.42 or 51.45, Stats., and there is no evidence from a medical report or assessment of chemical abuse since treatment, and there has been no OWI or OWI arrest within the past 2 years.

(b) When the assessment report or compliance report from a county department shows the person has agreed to participate in a recommended driver safety plan or satisfactorily completed a treatment program, and the person is no longer abusing chemicals.

(c) If the reason for the denial, cancellation, suspension or revocation of the person's operating privilege was not an assessment, and a medical report submitted by the person's personal physician indicates the person is receiving, or has received, adequate treatment for chemical abuse or dependency, and the person has responded favorably to the treatment and is no longer abusing chemicals.

(d) When a new driver safety plan is received after the person has an OWI conviction that occurs while the person is suspended or canceled for noncompliance as a result of sub. (1) (b), (c), (d), (e), (f) or (hm).

(e) When a person, county department, or traffic safety school under s. 345.60, Stats., submits the report or reports showing compliance with an assessment or driver safety plan after the operating privilege has been suspended as a result of sub. (1) (j) for any non-compliance with the assessment or plan.

(f) When a program in another state submits a report showing the person has been examined for chemical abuse or dependency and has followed a recommended program of education or treatment established to meet the requirements of that other state.

(3) REFUSAL, PERSONS UNDER AGE 19. If a person less than 19 years of age refuses to submit to chemical tests upon arrest for a violation of s. 346.63 (2m), Stats., or a local ordinance or a law of a federally-recognized American Indian tribe or band in this state in conformity therewith, the person is eligible for an occupational license under s. 343.10, Stats., after the first 15 days of the revocation period. The person shall not be required to comply with any assessment or driver safety plan for the refusal.

Note: s. 343.63 (2m), Stats., requires absolute sobriety of drivers less than 19 years of age. s. 343.305 (10) (em), Stats., provides for a 15-day occupational license waiting period.

(4) DEPARTMENT ACTION IN LIEU OF COURT ACTION. As provided under ss. 343.30 (1q) (f) and 343.305 (10) (f), Stats., the department shall order:

(a) The minimum revocation or suspension provided under statute when the court fails to order a revocation or suspension.

(b) An assessment when the court fails to order one.

(5) NOTICE OF LICENSING ACTION. (a) Persons affected by any departmental licensing action shall be given written notice, by first class mail, sent to the address last known to the department.

(b) A notice of license denial, cancellation, revocation or suspension, shall include the reason for the action. Cancellations and notices of suspension for noncompliance shall include information on any applicable review and appeal procedures.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; am. (1) (b), (h), (i) and (j), Register, March, 1984, No. 339, eff. 4-1-84; am. (1) (d) to (h), (j), (2) (b) and (c), (4) (a), Register, September, 1986, No. 369, eff. 10-1-86; emerg. am. (1) (j), cr. (2) (g), eff. 4-24-87; am. (1) (j) and (k), (2) (intro.) and (d), renum. (2) (f), (3) to (5) to be (3) to (6) and am. (3), (4) (intro.) and (6), cr. (2) (f), Register, May, 1988, No. 389, eff. 6-1-88; r. (1) (intro.), am. (1) (b), (e) to (i), (2) (a), (c), (d), (f) and (6), cr. (1) (hm) and (l) to (o), r. and recr. (1) (j), (k) and (3), Register, June, 1993, No. 450, eff. 7-1-93; am. (1) (j) 2., 3., (n), r. (6), Register, September, 1996, No. 489, eff. 10-1-96; **correction in (1) (o) made under s. 13.93 (2m) (b) 7., Stats.**

Trans 107.09 Departmental review. (1) In accordance with s. 343.30 (1q) (d) or 343.305 (10) (d), Stats., a person may request in writing within 10 days of license suspension, a review of license suspension for not complying with a driver safety plan as a result of a court ordered or department ordered assessment.

(2) The review shall be conducted by the review unit.

(3) The issues of the review shall be limited to:

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

(b) Whether the driver safety plan is appropriate.

(4) (a) The department shall conduct a review of an assessment, driver safety plan, or amended driver safety plan upon receipt of a written request for review under s. 343.30 (1q) (d) or 343.305 (10) (d), Stats. The review shall be completed within 10 business days of receipt of the request by the department.

(am) The driver assessment and required driver safety plan shall be found to be appropriate if the diagnostic or certainty level of symptoms identified on the assessment report of physiological, behavioral, psychological or attitudinal symptoms, supports the assessment findings made by the assessor on department forms as follows:

1. 'Chemical dependency.' An assessment finding of chemical dependency is appropriate if assessment shows the presence of any of the following:

a. One or more level 1 indicators of physiological dependency from the major criteria.

b. One or more level 1 indicators of dependency from the psychological, attitudinal or behavioral minor or major criteria are present together with 3 or more level 2 indicators of any type.

2. 'Suspected chemical dependency.' An assessment finding of suspected chemical dependency is appropriate if assessment shows 5 or more level 2 indicators of any type from the minor and major criteria.

3. 'Borderline chemical abuse.' An assessment finding of borderline chemical abuse is appropriate if assessment shows any of the following:

a. One level 1 indicator of substance problems from the psychological, attitudinal or behavioral criteria.

b. Three or 4 level 2 indicators of any type are present together with any level 3 indicators of any type.

4. 'Chemical abuse.' An assessment finding of chemical abuse is appropriate if assessment shows any of the following:

a. An absence of level 1 indicators and some level 2 or 3 indicators, but fewer level 2 and 3 indicators than are needed to justify a finding of chemical dependency, suspected chemical dependency or borderline chemical abuse.

b. A conviction for OWI.

Note: The Wisconsin Assessment of the Impaired Driver, form MV3649, and the Order For Assessment and Driver Safety Plan Report, form MV3634, refer to "chemical abuse" and "borderline chemical abuse" as "Irresponsible Substance Use" and "Irresponsible Substance Use - Borderline." The form refers to the criteria in s. Trans 107.09(4)(am)4. as "insufficient evidence for a progressive pattern of substance abuse."

(b) The department shall consider the following in determining the appropriateness of a driver safety plan:

1. A finding of chemical abuse does not support in-patient treatment or extensive out-patient treatment.

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

3. A finding of chemical abuse does support educational program recommendations.

4. A finding of suspected chemical dependency does support out-patient treatment or a 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.

6. A finding of borderline chemical abuse does support short term outpatient individual or group counseling, or a combination of education and outpatient counseling.

(c) A driver safety plan shall be considered inappropriate if it is a program in another state that does not meet the standards of sub. (9).

(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 by the department or a court, the person shall be required 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) A driver safety plan recommending treatment in another state is acceptable if approved by the county department or another state's program, it includes an examination of the driver's chemical abuse or dependency level, and it recommends an individualized plan or a program of education or treatment.

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; am. (4) (a), (b) (intro.), 1. to 4., (7) and (9), cr. (4) (d), Register, June, 1993, No. 450, eff. 7-1-93; r. and recr. (4) (intro.), (a), (b) (intro.), cr. (4) (b) 6., r. (4) (c), renum. (4) (d) to be (c) and am., Register, September, 1996, No. 489, eff. 10-1-96; reprinted to correct error in (4) (b) 6., Register, December, 1996, No. 492.

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 (5), 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 is subject to judicial review, in accordance with s. 343.40, Stats.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; am. (1), Register, June, 1993, No. 450, eff. 7-1-93.

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) For the purpose of counting the number of refusal revocations, OWI convictions, or arrests, all such convictions, refusal revocations, or arrests prior to, on, or after May 1, 1982 shall be counted by the department using the date of offense or arrest.

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

(4) 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.

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

(6) 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., Stats., 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; r. (2), renum. (3) to (7) to be (2) to (6), Register, January, 1991, No. 421, eff. 2-1-91.