

**Report From Agency
ADMINISTRATIVE RULES
REPORT TO LEGISLATURE
CLEARINGHOUSE RULE 06-035**

By the Department of Health and Family Services relating to ch. HFS 62, intoxicated driver assessments and driver safety plans, and ch. HFS 75, relating to community substance abuse service standards.

Basis and Purpose of the Proposed Rule

Sections 343.30 (1q) (c) 2. and 343.305 (10) (c) 2. , Stats., requires the Department to establish standards, including conflict of interest guidelines, for intoxicated driver assessments and driver safety plans by rule. These standards are set forth in ch. HFS 62, relating to intoxicated driver assessments and driver safety plans. Section 51.45 (8) (a) and (9) Stats., require the Department to establish minimum standards for community alcohol and other drug abuse treatment facilities and to promulgate rules for acceptance of persons into treatment programs, considering available treatment resources, for the purpose of early and effective treatment of alcoholics and intoxicated persons. These standards are set forth in ch. HFS 75, relating to community substance abuse service standards.

The Department proposes to repeal and recreate ch. HFS 62 to incorporate policy memos relating to intoxicated driver assessments and driver safety plans; to eliminate outdated and overly prescriptive rule provisions; and to update the rule to be consistent with state law affecting intoxicated drivers and the agencies serving them. The Department proposes to generally update ch. HFS 75, and to reinstate intervention services as a level of care. These services were inadvertently deleted when the Department repealed subchapter III of ch. HFS 61 and created ch. HFS 75.

Reponses to Legislative Council Rules Clearinghouse Recommendations

The Department accepted the comments made by the Legislative Council Rule Clearinghouse and modified the proposed rule where suggested.

Final Regulatory Flexibility Analysis

The proposed rule does not have a significant economic impact on small businesses.

Changes to the Analysis or Fiscal Estimate

Analysis

No changes were made to the rule's analysis.

Fiscal Estimate

No changes were made to the fiscal estimate.

Public Hearing Summary

The proposed rule was posted on the Wisconsin Administrative website on April 7, 2006 and the Department began accepting public comments via the website on April 25, 2006. The Notice of Public Hearing was posted on April 25, 2006. The Department conducted five public hearings around the state on May 18th (Wausau), May 24th (Madison), May 26th (Appleton), May 30th (Racine), and June 2nd (Eau Claire). The comment period was closed at 4:30 p.m. on Friday, June 9, 2006. Nine persons attended the public hearings.

List of Public Hearing Attendees and Commenters

The following is a complete list of the persons who attended the public hearing or submitted comments on the proposed rule, the position taken by the commenter and whether or not the individual provided written or oral comments.

	Name and Address	Position Taken (Support or Opposed)	Action (Oral or Written)
1.	Margaret Parsons Lincoln Health Care Center 607 North Sales Merrill, WI 54452	Opposed in Part	Oral
2.	Jim Hahn North Central Health Care 1225 Langlade Road Antigo, WI 54409	Opposed in Part	Oral
3.	Mark Seidl 810 Lincoln Street Kewaunee, WI 54216	Opposed in Part	Oral and Written
4.	Michael Klett Gateway Technical College 1001 South Main Street Racine, WI 53402-1582	Opposed in Part	Oral and Written
5.	Myles Tonnacliff 1011 North 8 th Street Sheboygan, WI 53081	Opposed in Part	Written
6.	William Graham Waukesha Co. Dept. of Health & Hum Srvcs 500 River View Avenue Waukesha, WI 53188	Support	Oral
7.	Ann Feller Omne Clinic 221 West Madison Street Eau Claire, WI 54703	Opposed in Part	Oral
8.	Arlene Eslinger Community Counseling Services		

	16947 Co. TK X Chippewa Falls, WI 54729	Opposed in Part	Oral and Written
9.	Paul Sneen Community Counseling Services 16947 Co. TK X Chippewa Falls, WI 547929	Opposed in Part	Oral and Written
10.	Lori Svendsen Monroe Co. Dept. of Human Services	Opposed in Part	Written

Public Comments and Department Responses

The number(s) following each comment corresponds to the number assigned to the individual listed in the “List of Public Hearing Attendees and Commenters” section of this document.

Rule Revision	Public Comment	Department Response
62.04 (5) (f) 2. and 62.07 (5) (a) 1. c.	There is a conflict of interest in allowing the traffic school coordinator to make the decision on whether or not a client is given a waiver to attend an alternative education program rather than the program(s) that this person is overseeing. There should be a more objective means of making decisions on waivers. 7, 8, 9	Traffic Safety School (TSS) is at the core of educational programming for intoxicated driver clients. The proposed rule requires the TSS coordinator and the county designated coordinator to make joint alternative education referrals (also known as waivers). The Department mediates any disagreements between the TSS coordinator and the designated coordinator. Section HFS 62.05 (5) (a) 1. c. and 2. c. has been revised to reflect this practice. The Department believes that the requirements for referrals as set forth in the proposed rule will result in a fair and objective process.
62.07 (1) (a) and (b)	The time lines suggested for completing an assessment would rarely happen in our county due to staffing restrictions. There should be some language encouraging these timelines, but accounting for agency staffing capabilities. 10	The Department does not have discretion to change the timelines for completing and reporting assessments and driver safety plans. The timelines stated in the rule are the timelines specified in s. 343.30 (1q) (c) 1m. 3., Stats.
62.12 (1) (a) 3. and 4.	An assessor should not be allowed to refer clients to alternative education classes that they teach or have a proprietary interest in.	Because there are only three alternative education programs in the state, the Department believes there should be flexibility in the referral process in order to meet the needs and choices of clients. The proposed rule details the

	4	criteria for referrals to alternative education programs. In addition, every referral must meet the criteria specified in the rule and must be jointly approved by the TSS coordinator and the county designated coordinator. The Department believes that the proposed rule sufficiently addresses the system for referrals to alternative education programs, including potential misuse of the system.
62.14	The “Client Rights” section requiring the written and oral notification of client rights under HFS 94 imposes a “two-tier” system of client rights and client appeals that is confusing and time-consuming. The ability of a client to utilize the client rights process can delay the imposition of the driver safety plan (DSP), which will allow the client to continue to drive while taking advantage of an often lengthy process. 1, 2, 3, 5	The Department has revised s. HFS 62.14 to ensure that there is a clear distinction between “client rights” as they pertain to misconduct by an assessment agency and “appeals” as they apply to assessment findings and driver safety plans. The new language should lessen the possibility that a client can use the client rights grievance process to delay implementation of the driver safety plan. These are two distinct issues and do not impose a “two-tier” system.
75.16 (5)	Alternative education programs conducted in lieu of group dynamics or multiple offender programs should be comparable as it pertains to purpose, content, instructor qualifications, and hours. 4	The proposed requirements for alternative education programs are similar to group dynamics and multiple offender programs. The purpose of alternative education programs is to accommodate participants who have special needs that cannot be accommodated by the group dynamics or multiple offender traffic safety school programs. To meet those special needs, instructor qualifications, and hours vary from the group dynamics and multiple offender programs.
75.16 (5) (a) 3.	The proposed rule sets the hours for Level II alternative education programs to 23 hours, with a one-hour follow-up meeting after 90 days. The follow-up meeting for one hour	Alternative education course requirements, including the one hour follow-up meeting, are modeled after the traffic safety school curriculum. The follow-up meeting after 90 days is an important component of the traffic safety education program and has been determined to be effective. It allows for a final

	<p>imposes an undue and unnecessary hardship on the participant.</p> <p style="text-align: right;">7, 8, 9</p>	<p>evaluation of the client, after a period, to determine if the client is successfully incorporating the lessons of the educational program into his or her daily life. Because, however, alternative education programs serve clients from around the state, as opposed to traffic safety schools who serve only county clients, the Department believes that it is reasonable to provide some allowances for the one-hour follow-up meeting. The Department has revised s. HFS 75.16 (5) (a) to allow a client who lives 60 miles or more from the alternative education program to conduct their final interview by phone, provided a concerned other is also present. These changes are included in s. HFS 75.16 (5) (a) 4.</p>
75.16 (5) (b) 5.	<p>The proposed rule requires instructors in alternative education programs to receive a minimum of 6 hours of continuing education. There needs to be written into the rule the consequences for not completing the educational requirements.</p> <p style="text-align: right;">4</p>	<p>Alternative education programs are required to report annually to the Department on progress in meeting the continuing education requirements. The Department has the authority under s. HFS 75.03 (2) to disallow continued program approval if any of the requirements of ch. HFS 75 are not met. The Department does not believe that additional rule requirements are necessary.</p>