

**PUBLIC HEALTH DEPARTMENT[641]**

**Regulatory Analysis**

Notice of Intended Action to be published: 641—Chapter 157

“Standards for Substance Abuse Treatment and Assessment  
and the Operating a Motor Vehicle While Intoxicated (OWI) Law”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 125.7(4)

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 125 and 321J

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held  
as follows:

November 6, 2024

Microsoft Teams

10 a.m.

Meeting ID: 268 876 122 100

Passcode: QXqezE

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory  
Analysis, which must be received by the Department of Health and Human Services no later  
than 4:30 p.m.

on the date of the public hearing. Comments should be directed to:

Victoria L. Daniels

Department of Health and Human Services

Lucas State Office Building

321 East 12th Street

Des Moines, Iowa 50319

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### *Purpose and Summary*

The purpose of this proposed rulemaking is to ensure that a person charged with an operating while intoxicated (OWI) offense completes a drinking drivers course and undergoes a substance abuse evaluation and/or treatment conducted by a regulated, licensed substance use disorder treatment program.

### *Analysis of Impact*

#### 1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

No classes of persons will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

Individuals who must receive court-ordered screening, evaluation, and treatment services due to receiving an OWI offense will benefit from the proposed rulemaking.

#### 2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There are approximately 100 licensed programs in Iowa that provide screening, evaluation, treatment, and drinking drivers courses to individuals charged with an OWI.

- Qualitative description of impact:

Licensed programs are regulated for adherence with the American Society of Addiction Medicine (ASAM) Criteria, which is the most widely used and comprehensive set of standards for placement, continued service, and transfer of patients with addiction and co-occurring disorders.

#### 3. Costs to the State:

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- Implementation and enforcement costs borne by the agency or any other agency:

Administrative costs will be borne by the Department.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Without these rules, persons charged with an OWI offense may seek substance use disorder assessment and/or treatment services with providers who are not regulated. Licensed programs are regulated for adherence with the ASAM Criteria. Unregulated providers may not have the expertise, knowledge, or competency to assess and/or treat substance use disorders. Without this regulation and oversight, there is an increased risk for providers to utilize treatment techniques that endanger the health, safety, and/or welfare of a patient, potential patient, concerned person, or member of the public.

In addition, without these rules, sole proprietors and other small business entities that are issued OWI evaluation-only licenses may be negatively impacted. Removal of this chapter may create an influx of service providers, which could reduce the volume of clients for already licensed small businesses.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less costly methods or less intrusive methods.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

There were no alternative methods that were seriously considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

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Please refer to the above benefits enumerated.

*Small Business Impact*

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Rulemaking will have no impact on small business.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 641—Chapter 157 and adopt the following **new** chapter in lieu thereof:

CHAPTER 157

STANDARDS FOR SUBSTANCE ABUSE TREATMENT AND ASSESSMENT PROGRAMS AND  
THE OPERATING A MOTOR VEHICLE WHILE INTOXICATED (OWI) LAW

**641—157.1(125) Definitions.** Unless otherwise indicated, the following definitions apply to the specific terms used in these rules:

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*“Assessment”* means the ongoing process of identifying a diagnosis, ruling out other diagnoses, and determining the level of care needed by the client.

*“Course for drinking drivers”* means an approved course designed to inform the offender about drinking and driving and to encourage the offender to assess the offender’s own drinking and driving behavior in order to select practical alternatives. Enrollment in the course is not limited to persons ordered to enroll, attend, and successfully complete the course required under Iowa Code sections 321J.1 and 321J.17. However, any person under the age of 18 who is required to attend the course for violation of Iowa Code section 321J.2 or 321J.17 must attend a course offered by a substance abuse treatment program licensed under Iowa Code chapter 125. Any instructional course for drinking drivers shall be approved by the department of education in consultation with the community colleges and substance abuse treatment programs licensed under Iowa Code chapter 125 and using the course of instruction detailed in rule 281—21.31(321J).

*“Evaluation”* means the process to evaluate the client’s strengths, weaknesses, problems, and needs for the purpose of defining a course of treatment. This includes use of a standardized placement screening and any additional patient/client profile information, and recommendation to an appropriate level of care.

*“HIPAA”* means the Health Insurance Portability and Accountability Act of 1996.

*“Licensed”* means issuance of a license by the department, which validates the licensee’s compliance with substance use disorder treatment program standards and authorizes the licensee to operate a substance use disorder treatment program in the state of Iowa.

*“Posttreatment”* means continuing care after primary treatment has been completed.

*“Primary treatment”* means substance use disorder treatment modality, including licensed program services under 641—Chapter 155.

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*“Program”* means any individual, partnership, corporation, association, governmental subdivision or public or private organization.

*“Qualifying program”* means a program which has a contract with the state of Iowa or the state’s contracted managed care entity to provide substance abuse treatment using a sliding fee scale.

*“Satisfactory completion of the drinking drivers course”* means receiving at the completion of the course a grade from the course instructor of “C” or “2.0,” or better.

*“Screening”* means the process by which a client/patient is determined at risk and in need of further evaluation. The focus is on the minimum criteria necessary for appropriateness/eligibility.

*“Treatment”* means the broad range of planned and continuing, inpatient, outpatient, and residential care services, including diagnostic evaluation, counseling, medical, psychiatric, psychological, and social service care, which may be extended to concerned persons, concerned family members, or significant others, and which is geared toward influencing the behavior of such individuals to achieve a state of rehabilitation.

**641—157.2(125) Screening, evaluation, treatment, and drinking drivers course.** Persons who are charged with operating a motor vehicle while intoxicated (OWI), Iowa Code section 321J.2, and whose driver’s license or nonresident operating privileges are revoked under Iowa Code chapter 321J shall be assigned to undergo a substance abuse evaluation and, if recommended, treatment from a provider licensed by the department under Iowa Code chapter 125.

**157.2(1) Screening.** The initial screening shall consist of a generally accepted standardized substance abuse screening instrument. The program shall utilize a recognized diagnostic test or tool to determine a “substance use disorder” as those terms are defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American

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Psychiatric Association (published 2013, with all changes and updates approved by the American Psychiatric Association through September 2023 incorporated herein). In addition, programs shall collect information on blood alcohol content at time of arrest, history of other alcohol or drug-related arrests, history of alcohol/drug treatment, history of mental health problems and treatment, any OWI arrest that included personal injury or additional charge(s), and family history of substance abuse.

**157.2(2) *Evaluation.*** In accordance with the American Society of Addiction Medicine (ASAM) Criteria and accepted standards of practice, the evaluation shall consist of evaluating a person's strengths, resources, preferences, limitations, problems and needs; determining the licensed program services needed by the patient; determining the patient's eligibility for program services; and identifying treatment plan priorities.

**157.2(3) *Treatment.*** Treatment shall consist of a broad range of planned and continuing, inpatient, outpatient, and residential care services, including ongoing diagnostic evaluation, counseling, and medical, psychiatric, psychological, and social service care geared toward influencing the behavior of such individuals to achieve a state of rehabilitation. Individuals will be placed in the appropriate level of care at a substance use disorder treatment program licensed by the department under Iowa Code chapter 125 in accordance with the most current edition of the ASAM Criteria.

**157.2(4) *Drinking drivers course.*** Substance abuse treatment programs licensed by the department under Iowa Code chapter 125 may provide the drinking drivers course if the course curriculum is approved by the department of education under Iowa Code section 321J.22 and rule 281—21.31(321J).

**641—157.3(125) Screening, evaluation, treatment, and drinking drivers course completion.** The program shall report substance use disorder screening, assessment, evaluation and treatment completion to the department of transportation and to the district

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court in accordance with Iowa Code sections 125.37, 125.84 and 125.86; the federal confidentiality regulations, “Confidentiality of Alcohol and Drug Abuse Patient Records,” 42 CFR, Part 2, effective June 9, 1987; HIPAA (1996); and other relevant provisions of federal and state law. The program shall report satisfactory completion of the drinking drivers course to the department of education in accordance with Iowa Code section 321J.22 and rule 281—21.31(260C); the federal confidentiality regulations, “Confidentiality of Alcohol and Drug Abuse Patient Records,” 42 CFR, Part 2, effective June 9, 1987; HIPAA (1996); and other relevant provisions of federal and state law.

**157.3(1) *Reporting form.*** Programs shall report screening, evaluation, and treatment completion utilizing the form “Notice Iowa Code 321J—Confidential Medical Record.” Iowa substance abuse evaluation and treatment providers licensed by the department under Iowa Code chapter 125 shall submit this form online to the department of transportation using the department of transportation’s website.

**157.3(2) *Primary treatment.*** Upon completion of primary treatment, programs shall report to the department of transportation and the courts that treatment has been completed in accordance with Iowa Code section 321J.22; the federal confidentiality regulations, “Confidentiality of Alcohol and Drug Abuse Patient Records,” 42 CFR, Part 2, effective June 9, 1987; HIPAA (1996); and other relevant provisions of federal and state law.

**157.3(3) *Posttreatment results.*** If the court orders a posttreatment program, the program shall report progress and attendance to the person’s probation officer or otherwise as ordered by the court in accordance with Iowa Code section 321J.22; the federal confidentiality regulations, “Confidentiality of Alcohol and Drug Abuse Patient Records,” 42 CFR, Part 2, effective June 9, 1987; HIPAA (1996); and other relevant provisions of federal and state law.

**157.3(4) *Drinking drivers course.*** Substance abuse treatment programs licensed by the department under Iowa Code chapter 125 may provide the drinking drivers course and shall



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report satisfactory completion of the drinking drivers course to the department of education in accordance with Iowa Code section 321J.22 and rule 281—21.31(260C).

### **641—157.4(125) Cost of evaluation and treatment.**

**157.4(1) *Screening and evaluation.*** The program shall charge no more than \$125 for the cost of screening and evaluation. The individual or the individual's insurance provider shall be responsible for the costs of the screening and evaluation.

**157.4(2) *Treatment.*** Qualifying programs shall consider a person admitted to the program pursuant to Iowa Code section 321J.3 who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part to be a state patient and eligible for state-funded treatment as provided in Iowa Code section 125.44. Qualifying programs shall utilize a sliding fee schedule approved by the department to determine cost of treatment. There is no prohibition on any individual from paying in whole the cost of treatment.

**157.4(3) *Reimbursement.*** Programs shall be able to seek reimbursement of the cost of screening, evaluation and treatment from an individual's insurance company, firm or corporation bound to pay, or from Medicaid for an individual who is eligible or enrolled in Medicaid.

**641—157.5(125) Timeliness.** The program shall conduct and complete substance abuse evaluations and treatment at the program's earliest convenience.

**641—157.6(125) Confidentiality.** Programs will abide by the standards for patient records set forth in rule 641—155.21(125,135).

**641—157.7(125) Records.** Programs shall maintain records in accordance with 641—subrule 155.21(10).

**641—157.8(125) Reciprocity.** For a resident of a state other than Iowa or an Iowa resident obtaining evaluation or treatment outside the state, screening, evaluation or treatment services

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shall be provided by programs licensed or approved by that state's substance abuse authority.

Programs shall submit the results of the screening, evaluation and treatment to the department for review and reporting purposes to the department of transportation.

These rules are intended to implement Iowa Code section 125.13.