

# **DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

## **OFFICE OF HIGHWAY SAFETY**

Statutory Authority: 21 Delaware Code, Section 4177D (21 **Del.C.**, §4177D)

**2 DE Admin. Code 1201**

**2 DE Admin. Code 1204**

### **FINAL**

### **ORDER**

## **1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees; 1204 Drinking Driver Programs Standard Operating Procedures**

### **I. NATURE OF PROCEEDINGS**

Pursuant to its authority under 21 **Del.C.** §4177D, the State of Delaware, Department of Safety and Homeland Security, Office of Highway Safety, proposed to amend regulations. The Department's purpose in proposing amended regulations was to increase the fees for DUI Evaluation, Education, and Outpatient Treatment programs. These programs are fee-for-service and providers have not been permitted a fee increase since 2001. Proposed fee increases are below the fair market value of these services in the private sector.

Notice of public comment period of thirty (30) days related to the Department's proposed amended regulations was published in the *Delaware Register of Regulations* on November 1, 2010.

### **II. PUBLIC COMMENTS**

The Department received the following public comments in response to its notice of intention to adopt the proposed amended regulations and offers the following responses thereto:

- A public comment was received recommending posted warnings at liquor stores with penalties for impaired driving. In the past, the Office of Highway Safety has provided these materials to retail liquor establishments. Updated materials will be made available via the OHS website for retailers.
- The State Council for Persons with Disabilities commented that the substitution of "DSAMH" for "DADAMH" was overlooked in references in §6.4 and §6.4.5. The Office of Highway Safety realizes this was a typographical error and has corrected those sections.
- The State Council for Persons with Disabilities noted that the fee structure was not consistent for administrative re-screening charges between Regulation 1201 and 1204. The Office of Highway Safety realizes there was a typographical error in Regulation 1204 and has made the correction.
- The State Council for Persons with Disabilities indicated there are references that imply fees will not be charged for missed appointments if an offender has a valid excuse/good cause for the absence. The Council further believes the definitions assigned are "weak" as to what constitutes a "no show." The Office of Highway Safety defers these decisions to the counselor. Counselor discretion is necessary as the counselor knows the clinical history of the specific client, how often they have missed appointments, as well as client demeanor. For this reason, we decline to amend the regulation as written.

### **III. FINDINGS AND CONCLUSIONS**

The public was given the required notice of the Division's intent to adopt the proposed amended regulations and was given the opportunity to provide the Division with comments concerning them. Thus, the Division concludes that its consideration of the proposed regulations was entirely within its prerogatives and statutory authority and, having received and considered public comments that did not lead to substantive change, is now free to adopt the proposed regulations.

### **IV. ORDER**

AND NOW, this 19th day of January, 2011 it is hereby ordered that:

- The proposed regulations are adopted;
- The text of the proposed regulations shall be in the form attached hereto as Exhibit A;
- The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 **Del.C.** §10118(e); and
- The Department reserves unto itself the authority to issue such other and further orders concerning its practices and procedures as may be just and proper.

**IT IS SO ORDERED:**

By: Lewis B. Schirilo, Secretary  
Department of Safety and Homeland Security

**1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees**

**1.0 Authority**

The authority to promulgate this regulation is 21 **Del.C.** §302, 21 **Del.C.** §4177(D) and 29 **Del.C.** §10115.

**2.0 Purpose**

A program is hereby established which involves an evaluation and referral to appropriate courses of instruction and/or rehabilitation for an alcohol related violation/offense.

**3.0 Applicability**

This policy regulation concerns the following sections found in Title 21: §4177, §4177A, §4177B, §4177C, §4177D, 4177E, §4177F, §2742, §2743, and §4175(b).

**4.0 Substance Of Policy**

4.1 The Delaware Evaluation & Referral Program, (DERP)

4.1.1 All persons who have been ordered to, or have volunteered to, enter a course of instruction or program of rehabilitation, shall first be evaluated by the Delaware DUI Evaluation & Referral Program. All evaluations completed by any other agencies (for out of state clients) are subject to a review and approval by DERP.

4.1.2 The minimum fee for DERP is ~~\$75.00~~ **\$100.00**. The minimum fee for processing an out of state evaluation and referral is ~~\$50.00~~ **\$125.00**. These fees shall be the responsibility of the clients.

4.2 The Education Program

4.2.1 A course of instruction shall be administered by any State of Delaware contracted education program provider. Any agency providing an instructional course must submit notice of completion to DERP. The Division of Motor Vehicles shall accept notice of completions from DERP for courses of instruction administered by State of Delaware contracted education program providers. Any out of state clients must be evaluated and treated by an agency approved by one of Delaware's contracted providers.

4.2.2 The minimum fee for the Education program is not to exceed the maximum fine imposed for the offense as set forth in 21 **Del.C.**, §4177. These fees shall be the responsibility of the clients.

4.2.3 Persons with more than one alcohol related violation must enter treatment and cannot be referred to an educational program.

4.3 The Out Patient Treatment Program

4.3.1 The program of rehabilitation shall be administered by any State of Delaware contracted treatment provider. Any agency providing rehabilitation treatment must submit a discharge summary for each client to DERP. The Division of Motor Vehicles shall accept notice of completions from DERP for courses of rehabilitation administered by State of Delaware contracted treatment program

- providers. Any out of state clients must be evaluated and treated by an agency approved by one of Delaware's contracted providers.
- 4.3.2 The minimum fee for this program is not to exceed the maximum fine imposed for the offense as set forth in 21 **Del.C.**, §4177. These fees shall be the responsibility of the clients.
- 4.3.3 The program of rehabilitation may be required for persons who have one alcohol related violation, and shall be required for persons who have two or more alcohol related violations. Further, this rehabilitation program may be required for persons regardless of blood alcohol content or refusal to submit to the chemical test and shall be required for persons with a blood alcohol content ~~greater than 1 1/2 times the legal limit of 0.15 or greater.~~
- 4.4 Alternative Treatment Programs. Programs shall be made available through existing contracted agencies to provide treatment services for those clients with alternative needs. Programs shall administer programs for those individuals under the age of 21 years, as well as for those individuals with mental health issues. In addition, if the treatment providers reach a clinical determination that the client needs further services not available at the providers' level, the client may be referred outside the network for those necessary services. (i.e. residential treatment services) Monitoring of additional treatment services and satisfactory completion release from the program shall be made by the designated contracted agency.
- 4.5 Failure To Appear. Additional fees may be charged by the evaluation unit, the educational program, and the treatment program for those clients failing to keep scheduled appointments or classes. If clients are unable to keep scheduled appointments, they must contact the evaluation unit or treatment unit, present an acceptable excuse, and request a rescheduling of their appointment or class. The fee for failure to appear shall not exceed ~~\$25.00~~ \$35.00. All fees shall be the responsibility of the clients.
- 4.6 Non Compliance. The absence of client contact within a 30 day period is cause for non compliance. More specifically, clients who miss two subsequent appointments, or miss three appointments over the course of treatment, are subject to non compliance processing as well. The fee for a client to be reinstated in the program (within a 2 year period) shall not exceed ~~\$25.00~~ \$35.00. Any clients waiting longer than 2 years to re enter the program will be required to pay all DERP fees in full as indicated in Section 1.
- 4.7 Program Evaluation. The Secretary of Public Safety or designee retains the authority to evaluate, whenever he/she deems appropriate, the above courses of instruction, programs of rehabilitation, and alcohol evaluation agency.
- 4.8 Schedule Of Fees. The schedule of fees for the courses of instruction, programs of rehabilitation, and alcohol evaluation agency shall be established by the Secretary of the Department of Public Safety and shall be posted within the standard operating procedures manual for the programs. All changes to the schedule of fees must be approved by the Secretary of Public Safety, and such fees not exceed the maximum fine imposed for the offense as set forth in 21 **Del.C.**, §4177.
- 4.9 Definition Of Alcohol Related Violations And Offenses. For purposes of this policy regulation, alcohol related violation/offense shall mean any violation under Title 21 of the Delaware Code, Sections 2740, 2742, 4177, 4177B, 4175 and all conforming statutes of any other state or the District of Columbia, or local ordinances in conformity therewith.

## **5.0 Severability**

If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

## **6.0 Effective Date**

The following regulations shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 **Del.C.** §10118(e).

**7.0 Dui Service Provider Fees (Effective ~~OCTOBER 1, 2004~~ January 1, 2011 March 11, 2011))**

Service	Current Fee
Screening by DERP	<del>\$75.00</del> <u>\$100.00</u>
Out of State Processing	<del>\$100.00</del> <u>\$125.00</u>
No Show (DERP)	<del>\$25.00</del> <u>\$35.00</u>
Administrative Reentry* (DERP)	<del>\$25.00</del> <u>\$35.00</u>
Education Program	<del>\$200.00</del> <u>\$250.00</u>
<del>No Show (Education)</del>	<del>\$25.00</del>
Outpatient Treatment	<del>\$600.00</del> <u>\$750.00</u>
<del>No Show (Treatment Group)</del>	<del>\$25.00</del>
<del>No Show (Treatment Individual)</del>	<del>\$25.00</del>
<del>Administrative Reentry (Programs)</del>	<del>\$25.00</del>
Urinalysis	<del>\$25.00</del> <u>\$35.00</u>
<del>Hardcore Program</del>	<del>\$25.00</del>
<u>Administrative Re Screening**</u>	<u>\$65.00</u>

\*This is an administrative fee is for non complied clients that do not require a new evaluation, but must be re entered and referred to a program. The client will also be charged this fee at the Provider Agency for administrative costs associated with processing the client referral.

\*\*This is an administrative fee for clients who tamper with their urine specimens to achieve dilute readings, which results in the need for further urine drug testing and further clinical evaluation.

**1204 Drinking Driver Programs Standard Operating Procedures**

**1.0 Nature and Purpose.**

Pursuant to 21 Del.C. §4177D, this is a policy of the Department of Public Safety, Office of Highway Safety. The purpose of this document is to provide a written operating procedure that shall apply to all Department of Public Safety contracted treatment, education and assessment providers. The Secretary of Public Safety or his/her designee must approve any changes to this document.

**6 DE Reg. 1361 (4/1/03)**

**2.0 Definitions**

**"Administrative Discharge"** The client has evidenced a need for services other than those available through the program. For example, worsening alcoholism that results in admission to detoxification or residential treatment services. This status is also assigned for clients who cannot attend the program for reasons beyond their control (i.e., permanent disability occurring after enrollment).

**"Case Management"** The process of coordinating and monitoring the services provided to a client both within a program and in conjunction with other providers. In the context of the Delaware DUI System, Case Management Services will only be provided by the Department of Public Safety contracted evaluation and referral provider.

**"Discharge Status"**

**"Discharge at Risk"** This category indicates that the client has completed the program's attendance requirements and paid the required fee, but has not demonstrated sufficient change to indicate responsible behavior in the community.

**"Non-Compliance"** The client has failed to comply with the rules and regulations associated with program entry and has also failed to comply with the conditions and expectations as outlined in the initial sessions.

**"Satisfactory"** This category indicates that the client has completed the program and that he/she has evidenced positive behavioral change, which indicates the capacity for responsible future behavior.

**"Enrollment"** The point at which the intake process has been completed, the client has paid the full Education Program fee or half of the Outpatient Program fee, and the program begins to provide clinical service.

**"In-State Clients"** The Delaware Evaluation and Referral Program will be responsible for coordinating services to address the client's DUI incident, for monitoring compliance with Delaware law regarding DUI, and updating client information and disposition status in the online tracking system. For those clients discharged at-risk, DERP is responsible for coordinating a referral for continuing treatment. DERP will also monitor the client's status for compliance with discharge requirements and update their disposition in the online tracking system.

**"No Show"** Defined as when a client fails to show for a scheduled appointment; is late for a scheduled appointment; calls to cancel a scheduled appointment without adequate notice; arrives for an appointment without the needed documentation; or arrives for an appointment under the influence of alcohol as evidenced by a positive breathalyzer.

**"Out-of-State Clients"** DERP is responsible for referring out-of-state clients to an approved provider in their area. DERP will continue to monitor the client's progress and status through communications with the out-of-state agency. Once the offender has completed the program in their area, DERP will review the evaluation results for compliance with the Delaware DUI program requirements. DERP will also be responsible to update the online tracking system with regard to the client's disposition status.

#### **6 DE Reg. 1361 (4/1/03)**

### **3.0 Applicability**

These standard operating procedures apply to all Department of Public Safety contracted DUI treatment, education, and assessment providers, as well as to all clients referred to this program whether they reside in or out of the State of Delaware.

#### **6 DE Reg. 1361 (4/1/03)**

### **4.0 Client Flow**

4.1 Referral to the Delaware Evaluation and Referral Program (DERP). The court is the organization that generally makes the referral to DERP by providing them with the client's name and referral information. DERP will then process this information according to the following procedures:

4.1.1 For a DUI client residing in Delaware or seeking treatment services through a Delaware contracted provider:

4.1.1.1 Sources of Referral

4.1.1.1.1 Court System

4.1.1.1.2 Probation and Parole

4.1.1.1.3 Client Self-Referral

4.1.1.1.4 Out-of-State DMV

4.1.1.1.5 Delaware DMV

4.1.1.2 Intake and Referral Process (at DERP)

4.1.1.2.1 DERP will enter client information into the online tracking system upon receipt.

4.1.1.2.2 The client has ~~72 hours~~ 10 days from the court appearance time and date to contact DERP and schedule an interview. DERP will send an introduction letter (Attachment A) to the client, typically within 24 hours of receipt of the referral.

4.1.1.2.3 DERP will contact each client by telephone on the evening prior to his or her scheduled appointment.\*

\*Please note: Should the client fail to contact DERP and schedule the appointment with ~~72 hours~~ 10 days of their court appearance, the staff at DERP may issue a non-

compliance discharge (Attachment C). Referral agency will be notified, the tracking system will be updated, and the process now stops.

Should the client fail to keep an appointment or arrive at the appointment without the fee or required paperwork, the staff at DERP will apply a no-show fee of ~~\$25.00~~ \$35.00 to the client's account, and the scheduling process will begin again.

Should the client fail to reschedule within 24 hours of the missed appointment, the staff at DERP may issue a non-compliance discharge. Referral agency will be notified, the tracking system will be updated, and the process now stops until the client takes the necessary steps to re-entry (Attachment D).

- 4.1.1.2.4 DERP will conduct a screening of the client and make a recommendation for program level of treatment, provide a supervisory clinical review (CADC), and make a referral (Attachment B) to a Delaware contracted DUI provider agency, as selected by the client.
- 4.1.1.2.5 A DERP screening is valid for ~~two years~~ one year. Education referrals, however, must be re-screened after each non-compliance discharge.
- 4.1.1.2.6 The Delaware contracted DUI provider agency selected should be county-appropriate, or by client request, and the referral shall be made within five business days of the client's assessment appointment.
- 4.1.1.3 Reasons for and Process of a DERP Non-Compliance
  - 4.1.1.3.1 Client fails to contact DERP within ~~72 hours~~ 10 days of court appearance.
  - 4.1.1.3.2 Client fails to show for a scheduled appointment and does not contact DERP to reschedule within 24 hours of the missed appointment.
  - 4.1.1.3.3 Client fails to keep two scheduled appointments per referral episode.
- 4.1.1.4 Completion Process (In-State Clients at DERP)
  - 4.1.1.4.1 ~~Update the tracking system with a notification date to the court (in-state or out-of-state court) of completion.~~
  - 4.1.1.4.2 ~~Advise Delaware, or other state's DMV, of completion.~~
  - 4.1.1.4.3 ~~Notify referring organization of discharge status.~~
  - 4.1.1.4.4 1 Close case and maintain file.
- 4.1.1.5 Fees (In-State Clients)
  - 4.1.1.5.1 Screening - ~~\$75.00~~ \$100.00
  - 4.1.1.5.2 No-Show - ~~\$25.00~~ \$35.00 per missed appointment
  - 4.1.1.5.3 Administrative Re-Entry Processing - ~~\$25.00~~ \$35.00
- 4.1.2 For a DUI client not residing in Delaware:
  - 4.1.2.1 Sources of Referral
    - 4.1.2.1.1 Court System
    - 4.1.2.1.2 Probation and Parole
    - 4.1.2.1.3 Client Self-Referral
    - 4.1.2.1.4 Out-of-State DMV
    - 4.1.2.1.5 Delaware DMV
  - 4.1.2.2 Intake and Referral Process (at DERP)
    - 4.1.2.2.1 Enter the client information into the online tracking system upon receipt.
    - 4.1.2.2.2 Send to and receive back from the client a complete release of information (Attachment E) and a letter regarding the process to reach completion (Attachment F).
    - 4.1.2.2.3 If necessary, direct the client to a facility in their area for an evaluation.
    - 4.1.2.2.4 If required paperwork is incomplete, or not received within 15 days of the date DERP sent the letter, DERP may issue a non-compliance discharge and close the case. The Administrative Processing Fee would then be applicable for the client to re-enter the system.

- 4.1.2.2.5 Refer the client to a facility in their area for the appropriate program as determined by the evaluation.
- 4.1.2.2.6 Maintain contact with the client until all client information is received.
- 4.1.2.3 Completion Process (Out-of-State Clients at DERP)
  - 4.1.2.3.1 Update the tracking system with a notification date to the court (in-state or out-of-state court) of completion.
  - 4.1.2.3.2 Advise Delaware, or other state's DMV, of completion.
  - 4.1.2.3.3 Notify referring organization of discharge status.
  - 4.1.2.3.4 Close case and maintain file.
- 4.1.2.4 Fees (Out-of-State Clients)
  - 4.1.2.4.1 Out of State Client Processing - ~~\$100.00~~ \$125.00
  - 4.1.2.4.2 Administrative Re-Entry Processing - ~~\$25.00~~ \$35.00
- 4.2 Referral from DERP is made to a Delaware Department of Public Safety DUI contracted provider.
  - 4.2.1 Intake and Referral Process (at Provider Agency)
    - 4.2.1.1 Check the DUI tracking system and extract new referrals daily.
    - 4.2.1.2 Print the new referral information and establish a client chart.
    - 4.2.1.3 Mail an appropriate introduction letter (Attachment G) to the client and update the online system indicating that the initial notification has been made.
    - 4.2.1.4 Enter data into the provider's internal client tracking system.
    - 4.2.1.5 Conduct client Orientation Meeting and schedule clients' events, client completes clinical intake and begins the program.\*
      - \*Please note. Should the client fail to attend an Orientation within 30 days of referral, the staff at the Provider Agency shall send a 30-day letter, issue a non-compliance discharge (Attachment H), and update the tracking system. The client seeking re-entry will be responsible for any no-show fees and the administrative processing fee.
  - 4.2.2 Program Completion and Client Disposition (at Provider Agency)
    - 4.2.2.1 Assign discharge status to client's event (s).
    - 4.2.2.2 Update the online system. For clients other than satisfactory discharge, any notes that explain the status will be helpful to DMV and the court system.
- 4.3 Re-Licensing
  - 4.3.1 Ignition Interlock Device Program
    - 4.3.1.1 First Offense Election. The IID Diversion Program is offered to DUI first offenders who qualify for the regular first offense election. This election must be made in court at the time of their plea. Eligibility requirements include enrollment in an appropriate education or treatment program and license revocation of at least one month.
    - 4.3.1.2 Refused Chemical Test. Offenders with a revoked license for refusal to submit to a chemical test may voluntarily participate in the IID program. Eligibility requirements include enrollment in an appropriate education or treatment program, license revocation for an additional two month period above and beyond their initial revocation, and their revoked license must be in the Division for a minimum period of two months (for a 12 month revocation), six months (for an 18 month revocation), or twelve months (for a 24 month revocation).
    - 4.3.1.3 Subsequent Conviction or Probable Cause Administrative Action. Offenders revoked for a subsequent DUI offense in either of these categories may voluntarily participate in the IID program. Eligibility requirements include enrollment in an appropriate treatment program, license revocation for an additional two month period above and beyond their initial revocation, and the revoked license must be in the Division for a minimum period of two months (for a 12 month revocation) or six months (for an 18 month revocation).

- 4.3.1.4 License Validity. The IID license is valid for Class D driving privileges provided the offender is driving a vehicle equipped with an approved Ignition Interlock Device and has the IID license in their possession.
- 4.3.2 Conditional Licensing
  - 4.3.2.1 The conditional license is only authorized for offenders with a first DUI violation who elect the First Offender Election option in court upon meeting the specific criteria.
  - 4.3.2.2 The offender must satisfactorily complete a minimum of sixteen (16) hours of alcohol education or treatment as determined by the Delaware Evaluation and Referral Program.
  - 4.3.2.3 There is a minimum 90-day hard revocation before a conditional license may be issued.
  - 4.3.2.4 The fee for a conditional license is \$10.00.
- 4.3.3 Reinstatement for First Offense Election
  - 4.3.3.1 The offender must satisfactorily complete an education or treatment program as determined by the Delaware Evaluation and Referral Program.
  - 4.3.3.2 There is a minimum six-month hard revocation before reinstatement can be made.
  - 4.3.3.3 The offender must complete a favorable character background review with the Division.
  - 4.3.3.4 The fee for reinstatement is \$143.75.
- 4.3.4 Reinstatement for DUI Conviction (without administrative action)
  - 4.3.4.1 The offender must satisfactorily complete an education or treatment program as determined by the Delaware Evaluation and Referral Program.
  - 4.3.4.2 There is a minimum six-month hard revocation before reinstatement can be made.
  - 4.3.4.3 The offender must complete a favorable character background review with the Division
  - 4.3.4.4 The fee for reinstatement is \$143.75.
  - 4.3.4.5 The offender must pass the vision, law, and road test administered by the Division, as well as pay the \$12.50 license fee. (in-state offenders only)
- 4.3.5 Reinstatement for Probable Cause or Refused Chemical Test (alone or with a DUI conviction)
  - 4.3.5.1 The offender must satisfactorily complete an education or treatment program as determined by the Delaware Evaluation and Referral Program.
  - 4.3.5.2 The offender must serve the revocation period in full.
  - 4.3.5.3 The offender must complete a favorable character background review with the Division.
  - 4.3.5.4 The fee for reinstatement is \$143.75.
  - 4.3.5.5 The offender must pass the vision, law, and road test administered by the Division, as well as pay the \$12.50 license fee. (in-state offenders only)

## **6 DE Reg. 1361 (4/1/03)**

### **5.0 Provider Programs**

#### **5.1 DUI Education Program**

##### **5.1.1 Overview**

- 5.1.1.1 The DUI Education Program consists of 16 hours of drug and alcohol education.
- 5.1.1.2 This program is designed for the first time offender who is of legal age to consume alcohol in the State of Delaware and who presents for an assessment following a DUI incident without evidence of an abuse problem, and typically with a BAC of less than 0.15.
- 5.1.1.3 The client referred to the program will receive 16 hours of education services through eight 2-hour classes. The class enrollment may be open or closed as long as the client does not have to wait more than 30 days to get started. The frequency of the meetings may vary by program.
- 5.1.1.4 Typically, the client will be referred to a program in the client's county of residence, but may request a referral to any of the three counties in Delaware.
- 5.1.1.5 During the course of the 16-hour program, a urine-drug screen (UDS) will be administered to every client. A positive UDS is grounds for immediate discharge at-risk from the

Education program. (Other criteria that can result in a discharge at-risk can be found on Page 14.)

- 5.1.1.6 Clients discharged at-risk from the Education program will be referred to a higher level of care, as determined by the client's counselor. This can include a referral to a DUI Outpatient treatment program, an intensive outpatient program at another agency, or an inpatient program at another agency.

#### 5.1.2 Associated Fees

- 5.1.2.1 Education Program - ~~\$200.00~~ \$250.00
- 5.1.2.2 No Show - ~~\$25.00~~ \$35.00 per missed appointment
- 5.1.2.3 Urinalysis - ~~\$25.00~~ \$35.00
- 5.1.2.4 Administrative Re-Entry - ~~\$25.00~~ \$35.00

#### 5.1.3 Discharge Criteria (Attachment I)

- 5.1.3.1 Satisfactory. The client must attend all scheduled classes, pay the fee, and get a passing grade (80% or greater) on a standardized content test; the client must also complete the requirements of the program within 90 days of the referral. Participation must be evident and the client must present an acceptable DUI Avoidance Plan. (Attachment J) Attendance at an addiction-focused community support group is also required.

- 5.1.3.2 Non-Compliance. The client will be considered non-compliant and a non-compliance discharge status will be assigned if the client meets any of the following criteria:

- 5.1.3.2.1 The client fails to begin the program within 30 days of referral.
- 5.1.3.2.2 The client fails to pay the required fee according to the program, or individually designed payment plan.
- 5.1.3.2.3 The client contact is lost for more than 30 days.
- 5.1.3.2.4 The client has failed to complete the program within 90 days of the referral.
- 5.1.3.2.5 A non-compliance discharge will also be assigned to clients who are disruptive to the process.
- 5.1.3.2.6 Clients who fail to show for two consecutive scheduled appointments, or fail to show for three scheduled appointments during the entire course of treatment, will also be non-complied. (Attachment K)

- 5.1.3.3 At-Risk. A client who has failed to accomplish the goals and objectives of the Education Program will be released under an At-Risk status. (Attachment K) Specific reasons for this status include:

- 5.1.3.3.1 Failure of a client to remain abstinent while in the program.
- 5.1.3.3.2 Lack of participation in the group setting.
- 5.1.3.3.3 Lack of, or an unacceptable DUI Avoidance Plan.
- 5.1.3.3.4 Failure to achieve a passing grade on the content test.
- 5.1.3.3.5 Being arrested for an alcohol-related incident while in the program.
- 5.1.3.3.6 The presence of clinical issues that indicate the necessity of further treatment in accordance with the DSM IV diagnostic criteria.

- 5.1.3.4 Administrative Discharge. ~~This discharge status is reserved for clients who cannot attend the program for medical reasons, have passed away, or cannot attend for a sound reason. This status may also be used to discharge a client to the services of another. This discharge status is reserved for clients who cannot attend the program for medical reasons or cannot attend for a sound reason (such as overseas military deployment). This status may also be used to discharge a client to the services of another provider.~~

## 5.2 The DUI Out-Patient Treatment Program

### 5.2.1 Overview

- 5.2.1.1 This program consists of the base program and two sub-programs, all of which require a minimum of sixteen hours of drug and alcohol treatment.

- 5.2.1.1.1 The “21 and Under Treatment Program” provides services specifically geared to the issues most common to a population of this age.
- 5.2.1.1.2 The “Alternative/Mental Health Treatment Program” provides services specifically geared to the issues most common to this population.
- 5.2.1.2 This program is designed for the repeat offender and the first offender who presents for an assessment following a DUI incident with evidence of an abuse problem and typically with a BAC of greater than 0.15.
- 5.2.1.3 The client referred to the program will receive a minimum of 16 hours of treatment services. The services are provided through a variety of methods and will differ by contracted service provider. The class enrollment may be open or closed as long as the client does not have to wait more than thirty (30) days to get started. The frequency of the meetings may vary by program.
- 5.2.1.4 Typically, the client will be referred to a program in the client’s county of residence, but may request a referral to any of the three counties in Delaware.
- 5.2.2 Acceptance of Prior Treatment
  - 5.2.2.1 Clients having received prior treatment services will be required to attend the DUI Provider’s DUI program orientation. Having completed any form of intensive substance abuse treatment indicates, in and of itself, a level of need that would typically warrant extended care and monitoring.
  - 5.2.2.2 These clients will be required to submit for a detailed assessment and should bring all paperwork relating to any prior substance abuse treatment. A urine drug screen will be required at the time of assessment. Any treatment received within the last 60 days will be reviewed and a clinical decision made to determine the extent to which the treatment satisfies DUI Outpatient Treatment Program’s requirements. Any treatment older than 60 days will not be considered.
  - 5.2.2.3 If the clinical determination is that the substance abuse treatment was adequate, but the “drinking and driving” component of the program was missing, the client will be referred to a DUI Education Program to ensure that this component is received. If the treatment completed was an inpatient program, after-care services will be required prior to discharge from the DUI program.
- 5.2.3 Fees
  - 5.2.3.1 Program - ~~\$600.00~~ \$750.00
  - 5.2.3.2 No Show (group session) - ~~\$25.00~~ \$35.00
  - 5.2.3.3 No Show (individual session) - ~~\$25.00~~ \$35.00
  - 5.2.3.4 Urinalysis - ~~\$25.00~~ \$35.00
  - 5.2.3.5 Administrative Re-entry (related to dilute UDS) - ~~\$25.00~~ \$65.00
- 5.2.4 Discharge Criteria (Attachment I)
  - 5.2.4.1 Satisfactory. The client must attend all scheduled classes, pay the fee, and get a passing grade (80% or greater) on a standardized content test; and must complete the requirements of the program within 120 days of the referral. Participation must be evident, client demonstrated a change in behavior, and the client must present an acceptable DUI Avoidance Plan. Attendance at a minimum of 6 addiction-focused community support group meetings is also required.
  - 5.2.4.2 Non-Compliance. The client will be considered non-compliant and a non-compliance discharge status will be assigned if the client meets any of the following criteria:
    - 5.2.4.2.1 The client fails to begin the program within 30 days of referral.
    - 5.2.4.2.2 The client fails to pay the required fee according to the program, or individually designed payment plan.
    - 5.2.4.2.3 The client contact is lost for more than 30 days.
    - 5.2.4.2.4 The client has failed to complete the program within 120 days of the referral.

- 5.2.4.2.5 A non-compliance discharge will also be assigned to clients who are disruptive to the process.
- 5.2.4.2.6 Clients who fail to show for two consecutive scheduled appointments, or fail to show for three scheduled appointments during the entire course of treatment, will also be non-complied.
- 5.2.4.3 At-Risk A client who has failed to accomplish the goals and objectives of the Treatment Program will be released under an At-Risk status (Attachment L). Specific reasons for this status include:
  - 5.2.4.3.1 Failure of a client to remain abstinent while in the program.
  - 5.2.4.3.2 Lack of participation in the group setting.
  - 5.2.4.3.3 Failure to complete the treatment plan
  - 5.2.4.3.4 Lack of, or an unacceptable DUI Avoidance Plan.
  - 5.2.4.3.5 Failure to achieve a passing grade on the content test.
  - 5.2.4.3.6 Being arrested for an alcohol-related incident while in the program.
  - 5.2.4.3.7 The presence of clinical issues that indicate the necessity of further treatment in accordance with the DSM IV diagnostic criteria.
- 5.2.4.4 Administrative Discharge. This discharge status is reserved for those clients who cannot attend the program for medical reasons, have passed away, or cannot attend for a sound reason. This status may also be used to discharge a client to the service of another.
- 5.3 ~~Other Programs. There are other, more intensive services available for use at the discretion of the Program Managers. These include services such as residential treatment and medical detoxification. In addition, a Hardcore Program for drinking drivers is currently in the development stages. This program will target offenders with a history of DUI incidents, and offer appropriate treatment services.~~ Resolution of At-Risk Discharge. To resolve an at-risk discharge, the client must enroll in a more in-depth treatment program, and subsequently complete the program satisfactorily.
  - 5.3.1 The client may choose to continue receiving services with the current agency, or may choose to receive the required services at a new agency (a list of accepted agencies will be provided at the time of discharge).
  - 5.3.2 If a new agency is chosen, that agency must be licensed by the Division of Substance Abuse and Mental Health (DSAMH).
  - 5.3.3 The client must contact the discharging agency prior to the start of the new treatment program and sign a release of information form with both agencies.
  - 5.3.4 The client must remain drug and alcohol free for a minimum of 12 weeks prior to successful discharge.
  - 5.3.5 The client must return to the discharging agency within 60 days of completing the new treatment services and bring the discharge summary (including prognosis), a description of services received, and the DUI at-risk discharge completion form (Attachment L). A certificate of completion is not acceptable documentation.
- 5.4 ~~Other Programs. There are other, more intensive services available for use at the discretion of the Program Managers. These include services such as residential treatment and medical detoxification. In addition, a Hardcore Program for drinking drivers is currently in the development stages. This program will target offenders with a history of DUI incidents, and offer appropriate treatment services.~~

**6 DE Reg. 1361 (4/1/03)**

**6.0 Appeals Process**

- 6.1 Overview. An individual who has been discharged from a DUI Education/Treatment Program, and has unsuccessfully appealed that discharge in accordance with the duly established appeals procedures of the education/treatment agency, may appeal the discharge to the ~~Division of Alcoholism, Drug Abuse and Mental Health (DADAMH)~~ Substance Abuse and Mental Health (DSAMH).

- 6.2 Client Responsibilities. Within 10 days from the effective date on the official notice of the internal appeals decision of the education/treatment agency, the client must submit an appeal to ~~DADAMH~~ DSAMH, which includes all of the following documents:
- 6.2.1 Notice of Appeal of Discharge to ~~DADAMH~~ DSAMH form (Attachment M). This form should be obtained from the education/treatment agency. The client must use the form to clearly state the reason (s) for the appeal. The client must clearly cite the specific items in the discharge letter from the treatment/education agency that he/she is challenging. The client must also present objective, measurable facts that support his/her challenge to the education/treatment agency's decision.
  - 6.2.2 Discharge letter from education/treatment agency that clearly indicates the specific reasons for discharge.
  - 6.2.3 Official notice of the internal appeals decision from the education/treatment agency verifying that the client has completed the agency's internal appeal process, and that the decision to discharge has been upheld.
  - 6.2.4 A fully completed and signed "Consent for Release of Confidential Information" that complies with 42 CFR requirements allowing the education/treatment agency to provide information to the ~~DADAMH~~ DSAMH DUI Appeals Team. A copy of this form must also be given to the education/treatment agency. (This form should be obtained from the education/treatment agency.)
- 6.3 Education/Treatment Agency Responsibilities. The education/treatment agency that has discharged the client must:
- 6.3.1 Provide the client with a letter, which details the specific objective, measurable reasons why he/she has been discharged from the program. These reasons must be based upon the Criteria for Discharge that have been approved by the Office of Highway Safety (OHS) for the DUI Education/Treatment Program.
  - 6.3.2 Offer the client the opportunity to appeal the discharge to the education/treatment agency following the appeals process approved by OHS and give the client an official notice of the internal appeals decision verifying that the discharge was upheld.
  - 6.3.3 Explain the process to appeal further to ~~DADAMH~~ DSAMH and provide the client with the Appeal of Discharge to ~~DADAMH~~ DSAMH form.
  - 6.3.4 Provide the client with the appropriate "Consent for Release of Confidential Information" form and assist the client to complete the form correctly and completely. Keep one signed original and give the client one signed copy.
  - 6.3.5 Upon notification from the ~~DADAMH~~ DSAMH Appeals Team that an appeal has been received, provide the ~~DADAMH~~ DSAMH Appeals Team, within 10 working days, the specific, objective, measurable documentation to support the reasons for discharge in the letter given to the client.
- 6.4 ~~DADAMH~~ DSAMH Appeals Team Responsibilities
- 6.4.1 Log in and date stamp the appeal packages received from clients
    - 6.4.1.1 Appeal packages received in the ~~DADAMH~~ DSAMH Appeals Team office, or postmarked no later than ten (10) days from the effective date of the official notice of the internal appeals decision from the education/treatment program, will be scheduled to be reviewed by the ~~DADAMH~~ DSAMH Appeals Team.
    - 6.4.1.2 Appeals not received in the ~~DADAMH~~ DSAMH Appeals Team office, or postmarked later than ten (10) days from the effective date of the official notice of the internal appeals decision from the education/treatment program, will be logged in and returned to the appellant without further action.
    - 6.4.1.3 Appeal packages that are incomplete (i.e., do not contain all four of the items outlined in Chapter VI, Section B – Client Responsibilities above, completed inaccurately, or without appropriate signatures as required) will be logged in and returned to the appellant. If a corrected appeals package is not returned before the original ten (10) day period expires, the appeal will not be reviewed by the ~~DADAMH~~ DSAMH Appeals Team.
  - 6.4.2 The ~~DADAMH~~ DSAMH Appeals Team will contact the education/treatment agency to request specific, objective, measurable documentation to support the reasons for discharge in the letter

given to the client. If the documentation is not received by the ~~DADAMH~~ DSAMH Appeals Team within 10 working days from the contact date, the Team's decision will be based solely upon the documentation provided by the appellant.

- 6.4.3 The ~~DADAMH~~ DSAMH Appeals Team will meet at least monthly to review appropriately submitted appeals. All appropriately submitted appeals received by the ~~DADAMH~~ DSAMH Appeals Team three days prior to a scheduled review will be considered at the review. Appeals received after three working days before a scheduled review will be considered at the next scheduled review.
- 6.4.4 The ~~DADAMH~~ DSAMH Appeals Team will carefully consider all the required documentation provided by the client and the education/treatment provider. Decisions will be based solely on the documentation provided in writing. No in-person hearings will be conducted. No in-person appearances by education/treatment providers will be allowed. THE TEAM WILL RENDER A DECISION REGARDING WHETHER OR NOT THE EDUCATION/TREATMENT AGENCY FOLLOWED THE CRITERIA APPROVED BY DPS/OHS FOR DISCHARGE OF CLIENTS FROM THE DUI EDUCATION/TREATMENT PROGRAM.
- 6.4.5 Within 10 days of the review, the ~~DADAMH~~ DSAMH Appeals Team will notify the client, OHS, and the education/treatment agency of the Team's decision and rationale behind the decision. **All decisions are final**, and no subsequent review will be held by DADAMH on the same appeal.
- 6.4.6 Within 10 days of the review, the ~~DADAMH~~ DSAMH Appeals Team will enter the decision into the DUI Tracking System.

**6 DE Reg. 1361 (4/1/03)**

**7.0 Fee Schedules**

<b>Service</b>	<b>Current Fee</b>
Screening by DERP	<del>\$75.00</del> <u>\$100.00</u>
Out of State Processing	<del>\$100.00</del> <u>\$125.00</u>
No Show (DERP)	<del>\$25.00</del> <u>\$35.00</u>
Administrative Re-entry (DERP)*	<del>\$25.00</del> <u>\$35.00</u>
Education Program	<del>\$200.00</del> <u>\$250.00</u>
No Show (Education)	<del>\$25.00</del> <u>\$35.00</u>
Outpatient Treatment	<del>\$600.00</del> <u>\$750.00</u>
No Show (Treatment-Group)	<del>\$25.00</del> <u>\$35.00</u>
No Show (Treatment-Individual)	<del>\$25.00</del> <u>\$35.00</u>
Administrative Re-Entry (Programs)*	<del>\$25.00</del> <u>\$35.00</u>
Urinalysis	<del>\$25.00</del> <u>\$35.00</u>
<u>Administrative Re-screening**</u>	<u>\$35.00</u>
Hardcore Program – in development	

\*This is an administrative fee is for non-complied clients that do not require a new evaluation, but must be re-entered and referred to a program. The client will also be charged this fee at the Provider Agency for administrative costs associated with processing the client referral.

\*\*This is an administrative fee related to dilute urinalysis results. Clinicians are required to complete an in-depth case review and determine the best process forward for the individual client.

**6 DE Reg. 1361 (4/1/03)**

## **8.0 Reports**

- 8.1 Each agency is responsible for maintaining current information in the tracking system on client activity. The information must be sufficient to permit the following reports to be generated:
- 8.1.1 ~~The number of clients referred to any provider agency by DERP. The program the client was referred to within the provider agency must also be shown. The client referral date to the program represents the reference datum. All time-related information reported must be relative to this date.~~
  - 8.1.2 ~~The number of calendar days from referral date to the provider agency and 1st contact with client by the provider.~~
  - 8.1.3 ~~The number of calendar days from referral date to the provider agency and client enrollment.~~
  - 8.1.4 ~~The number of clients that have been referred in the target month but have not started the program in that same month.~~
  - 8.1.5 ~~The number of calendar days from referral date to the client completing the program.~~
  - 8.1.6 ~~The number of clients referred during a target month by the discharge status assigned.~~
  - 8.1.7 ~~It is also necessary for the agencies to report the distribution of the population by age, BAC, sex and number of DUI events.~~

**6 DE Reg. 1361 (4/1/03)**

## **8.0 Reporting**

Each agency is responsible for maintaining client activity information in the online DUI tracking system. The information must be complete, accurate, and timely. The Office of Highway Safety will use the system to generate any necessary reports.

## **9.0 Attachments\***

- 9.1 Client Introductory Letter from DERP
- 9.2 In-State Client Letter from DERP
- 9.3 Client Non-Compliance Letter from DERP
- 9.4 DERP Re-entry Letters
- 9.5 Standard Release of Information
- 9.6 Out-of-State Client Information Letters
- 9.7 Client Introductory Letter from Program
- 9.8 Client Non-Compliance Letter from Program
- 9.9 Discharge Criteria – Supporting Information
- 9.10 Sample DUI Avoidance Plan
- 9.11 ~~No Show Non-Compliance Letter~~ At-risk Letter from Program
- 9.12 ~~At-Risk Letter from Program~~ At-risk Discharge Clearance Document
- 9.13 ~~DADAMH DSAMH~~ Appeals Process and Letter

\*Attachment documents can be viewed at The Office of Highway Safety and are not attached to this regulation.

**6 DE Reg. 1361 (4/1/03)**

**14 DE Reg. 907 (03/01/11) (Final)**