

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY)(MARCH 9, 2020)
COVID-19 STATE OF EMERGENCY

TEMPORARY RULE MODIFICATION OF N.J.A.C. 10:162 – INTOXICATED DRIVING PROGRAM, ADOPTED BY THE COMMISSIONER OF THE DEPARTMENT OF HUMAN SERVICES

Date: May 21, 2020

Authority: N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy)(“EO 103”)

Effective Date: May 21, 2020

Expiration Date: 45 days after the expiration of the Public Health Emergency

This is an emergency adoption of a temporary rule modification concerning certain rules at N.J.A.C. 10:162-1.1 et. seq., Intoxicated Driving Program (IDP), which apply to county-designated Intoxicated Driving Resource Centers (IDRCs), affiliated treatment programs, and individuals convicted of an intoxicated driving and related offense (referred to in the regulation as “clients”). Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Department of Human Services is modifying the rules listed below.

The current rules at N.J.A.C. 10:162-1.1 et. seq. set out standards and processes for clients who are noncompliant with IDRC and treatment program requirements after being convicted of an intoxicated driving and related offense, and for the establishment of the IDRCs. An extended public health emergency impacts the underlying system that manages and monitors individuals convicted of intoxicated driving and related offenses, including municipal court suspensions and interruptions in service at IDRCs, affiliated treatment programs and the IDP. These effects hinder clients’ ability to participate in and complete their IDRC and treatment program requirements. In addition, clients may be directly affected by COVID-19 through the need to self-isolate/quarantine, care for family members due to illness or school closures, or report to work as essential employees. Thus, at this time, it is necessary to address and ensure flexibility in the standards and processes in the rules at N.J.A.C. 10:162-1.1 et. seq. during the COVID-19 Public Health Emergency. The terms of this modification shall remain in effect for forty-five (45) days following the conclusion

of the COVID-19 Public Health Emergency, whereupon the IDP, IDRCs and affiliated treatment programs will be required to resume treating noncompliance and operations according to the provisions set forth in N.J.A.C. 10:162-1.1 et. seq.

Full Text of the proposed modifications follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10:162-1.3 Establishment of an Intoxicated Driver Resource Center (IDRC)

(a) Subject to the approval of the Division of Mental Health and Addiction Services, the counties shall, with its cooperation, designate and establish Intoxicated Driver Resource Centers on a county or regional basis as required by N.J.S.A. 39:4-50(f). The counties may establish such a center themselves or in cooperation with other counties. The counties may either operate the IDRCs themselves, or they may contract for the operation of the IDRCs.

1. Each county shall designate and establish a 12-hour IDRC and a 48-hour IDRC.
 - i. The 12-hour IDRC shall detain assigned clients for no less than six hours each day during two consecutive days. **For the duration of the COVID-19 Public Health Emergency and until expiration of this temporary rule modification, the requirement that clients be detained for a period of no less than six hours each day during two consecutive days for a period of 12 hours may be satisfied by the completion of a 12-hour online IDRC program approved by the Intoxicated Driving Program.**
 - ii. The 48-hour IDRC shall detain assigned clients for 48-consecutive hours. **For the duration of the COVID-19 Public Health Emergency and until expiration of this temporary rule modification, the requirement that clients be detained for a period of 48 consecutive hours may be satisfied by the client's completion of an online IDRC program designed for second offenders and approved by the Intoxicated Driving Program. The curriculum must be completed over the course of 48 consecutive hours. In addition, the 48-hour IDRC must ensure that participating clients are detained for 48 consecutive hours in their residence, such as through written client attestation or other forms of monitoring (e.g. telephone or electronic check-ins).**

10:162-3.3 Rescheduling

(a) A rescheduling of a client for attendance at the Intoxicated Driver Resource Center may be granted for the following reasons only:

1. Health emergency, either personal or family;
2. Death in the family within 10 days prior to scheduled appointment;
3. Documented work emergency; [or]
4. Family emergency[.]; or
5. **Any reason related to the COVID-19 Public Health Emergency including, but not limited to, the client's self-isolation, quarantine or illness; need to care for a family member due to illness or school closure; need to report to work as an essential employee; or inability to pay any required fee to the Intoxicated Driver Resource Center due to loss of employment or wages.**

- (b) The reasons or instances in (a)(1) through [4] (5) above shall be proved by suitable documentation, such as a physician's letter, obituary notice, **notification of school closure due to the COVID-19 Public Health Emergency**, or a letter from an employer.

10:162-3.4 Forty-eight hour detainment of second offenders who have been in jail or treatment

- (a) A person convicted for a second offense pursuant to N.J.S.A. 39:4-50 et seq. or N.J.S.A. 12:7-46 or 12:7-34.19 et seq. shall be imprisoned at a jail or workhouse or an Intoxicated Driver Resource Center or inpatient program for at least 48 consecutive hours and satisfy the other program requirements. **For the duration of the COVID-19 Public Health Emergency and until expiration of this temporary rule modification, the requirement that persons convicted for a second offense be imprisoned for a period of 48 consecutive hours may be satisfied by the individual's completion of an online IDRC program designed for second offenders and approved by the Intoxicated Driving Program. The curriculum must be completed over the course of 48 consecutive hours. In addition, the 48-hour IDRC must ensure that participating clients are detained for 48 consecutive hours in their residence, such as through written client attestation or other forms of monitoring (e.g. telephone or electronic check-ins).**

10:162-6.5 Failure to comply with treatment requirements

- (a) Once the client has been accepted for treatment, any failure to comply with the treatment program shall be reported by the treatment program to the Intoxicated Driver Resource Center in writing within seven working days. Failure to comply with the treatment program shall include, but not be limited to:

1. Failing to attend specific meetings;
2. Failing to comply with the treatment contract;
3. Failing to participate in individual and group counseling; or
4. Failing to attend self-help group meetings.

- (b) **The treatment program shall consider whether the client's failure to comply with treatment requirements is related to the public health emergency, including, but not limited to, the client's self-isolation, quarantine or illness; need to care for a family member due to illness or school closure; or need to report to work as an essential employee. If so, then it shall not be considered a failure to comply with treatment requirements and the treatment program shall not submit a report to the Intoxicated Driver Resource Center.**

10:162-8.1 Failure to attend the Intoxicated Driver Resource Center/Intoxicated Driving Program or pay the required fees

- (a) Failure to attend the Intoxicated Driver Resource Center/Intoxicated Driving Program or to pay the required fees shall be considered noncompliance. In such cases, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall take the following steps:

1. A notice of noncompliance shall be mailed to the client's address on the record of conviction or the client's most recent address if the client has notified the Intoxicated Driver Resource Center/Intoxicated Driving Program of a change of address.

2. If there is no reply, or if the client remains in noncompliance, the Intoxicated Driver Resource Center/Intoxicated Driving Program, within 10 working days of mailing the notice of noncompliance, may issue a noncompliance report:
 - i. A copy of the report shall be mailed to the client.
 - ii. If the client is a new law offender, a copy of the report shall be mailed to the court of conviction with a copy of the original notice of noncompliance.
3. If the noncompliance is not resolved within 30 calendar days after the issuance of the noncompliance report, a copy of the noncompliance report and supporting documents shall be mailed to the Intoxicated Driving Program. The Intoxicated Driving Program shall request that the Division of Motor Vehicles suspend the client's license.
4. **The Intoxicated Driver Resource Center/Intoxicated Driving Program shall consider:**
 - i. **if the client's failure to attend is related to the public health emergency, including, but not limited to, the client's self-isolation, quarantine or illness; need to care for a family member due to illness or school closure; or need to report to work as an essential employee. If so, then the client's absence shall not be considered a failure to attend and the client shall not be placed in noncompliance status.**
 - ii. **if the client's failure to pay the required fees is related to the public health emergency, including any resultant loss of employment or wages. If so, then the Intoxicated Driver Resource Center may consider alternate payment arrangements, such as a payment schedule or plan. If the client's failure to pay the required fees is related to the public health emergency and the client has entered into an alternate payment arrangement, then the client shall not be placed in noncompliance status. The Intoxicated Driver Resource Center shall consult with the county designating authority regarding the handling of fees and alternate payment arrangements for clients during and subsequent to the public health emergency. The allowance of alternate payment arrangements shall not remove or waive the client's obligation to pay any required fees.**
5. **The Intoxicated Driver Resource Center/Intoxicated Driving Program shall discontinue the noncompliance process set out in (a)(1)-(3) of this section as follows:**
 - i. **For clients who have been issued a notice of noncompliance pursuant to (a)(1) of this section between February 7, 2020 and the effective date of this temporary rule modification, the Intoxicated Driver Resource Center shall discontinue the noncompliance process and the notice of noncompliance shall be void. The IDRC shall contact and communicate with the client regarding the actions that the client must take to satisfy their attendance, education, screening, evaluation, referral, program and/or fee requirements.**
 - ii. **For clients who have been issued a noncompliance report pursuant to (a)(2) of this section between February 23, 2020 and the effective date of this temporary rule modification, the Intoxicated Driver Resource Center shall discontinue the noncompliance process and the noncompliance report shall be void. The Intoxicated Driver Resource Center shall contact and**

communicate with the client regarding the actions that the client must take to satisfy their attendance, education, screening, evaluation, referral, program and/or fee requirements.

- iii. The IDP shall cease forwarding requests for driver's license suspensions as required by (a)(3) of this section to the Motor Vehicle Commission for clients who have been issued a notice of noncompliance and a noncompliance report as described above in i and ii.
- iv. Upon the resumption of municipal court services, nothing in this subsection shall preclude an Intoxicated Driver Resource Center or the Intoxicated Driving Program from initiating and following the noncompliance process set out in (a)(1)-(3) of this section for client noncompliance that is not connected to and excused by the public health emergency as permitted by this temporary rule modification.

10:162-8.2 Failure to contact treatment facility

- a. When the Intoxicated Driver Resource Center/Intoxicated Driving Program has been notified that a client has not contacted the treatment facility by the contact date, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall follow the procedures of N.J.A.C. 10:162-8.1(a) through (c) and shall, for new law clients, in addition to the other documents, mail a copy of the treatment agreement to the court of conviction.
- b. The Intoxicated Driver Resource Center/Intoxicated Driving Program shall consider whether the reported failure to contact the treatment facility is related to the public health emergency, including, but not limited to, the client's self-isolation, quarantine or illness, need to care for a family member due to illness or school closure, or need to report to work as an essential employee. If so, then such inaction shall not be considered a failure to contact the treatment facility for purposes of this section, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall not implement the noncompliance procedures at N.J.A.C. 10:162-8.1, and shall not submit any documentation to the court of conviction.

10:162-8.3 Failure to comply with the treatment program

- a. Upon receipt of a Client Treatment Release form indicating that the client did not comply with the treatment program requirements, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall follow the procedures in N.J.A.C. 10:162-8.1(a)1 through 3 and shall, for new law clients, in addition to the other documents, mail a copy of the treatment agreement to the court of conviction.
- b. The Intoxicated Driver Resource Center/Intoxicated Driving Program shall consider whether the reported failure to comply with the requirements of the treatment program is related to the public health emergency, including, but not limited to, the client's self-isolation, quarantine or illness; need to care for a family member due to illness or school closure; or need to report to work as an essential employee. If so, then such inaction shall not be considered a failure to comply with the treatment program for purposes of this section, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall not implement the noncompliance

procedures at N.J.A.C. 10:162-8.1, and shall not submit any documentation to the court of conviction.

10:162-8.7 Noncompliance with treatment

- a. The treatment program shall notify the Intoxicated Driver Resource Center/Intoxicated Driving Program of any noncompliance in writing within seven working days. The Intoxicated Driver Resource Center shall notify the courts and the Intoxicated Driving Program utilizing the noncompliance report.
- b. The treatment program shall consider whether the client's noncompliance is related to the public health emergency, including, but not limited to, the client's self-isolation, quarantine or illness; need to care for a family member due to illness or school closure; or need to report to work as an essential employee. If so, then the client's action shall not be considered noncompliance for purposes of this section, the treatment program shall not notify the Intoxicated Driver Resource Center/Intoxicated Driving Program, and the Intoxicated Driver Resource Center shall not submit a noncompliance report to the courts and the Intoxicated Driving Program.**

These modifications are necessary to avoid non-compliance determinations as a result of the inability of clients to fully engage and/or complete IDRC and program requirements for COVID-19 related reasons and to prevent unnecessary in-person contact. The terms of this modification shall remain in effect for forty-five (45) days following the conclusion of the COVID-19 Public Health Emergency, whereupon the IDP, IDRCs, and affiliated treatment programs will be required to resume treating noncompliance according to the provisions set forth in N.J.A.C. 10:162-1.1 et. seq.

I find that the modification of the rules above is necessary because enforcement of the existing rules would be detrimental to the public welfare during this emergency.

Date

June 1, 2020

Carole Johnson

Commissioner, Department of Human Services