**Section 1001.444 Monitoring Device Driving Permit (MDDP) Provisions**

a) Breath Alcohol Ignition Interlock Device (BAIID) Required for Issuance; Fee Required

1) The Secretary shall notify a first offender (MDDP offender), as defined in IVC Section 11-500, that he or she will be issued an MDDP. The issuance of the MDDP shall be conditioned on the installation and use of a BAIID in any vehicle operated, as required by IVC Section 6-206.1. Only BAIIDs certified by the Secretary under Section 1001.442 of this Part may be utilized. As provided in IVC Section 6-206.1, an MDDP offender must pay a non-refundable fee in an amount equal to $30 per month times the number of months or any portion of a month remaining on the statutory summary suspension at the time the Secretary issues the MDDP. No fee will be charged for any month in which the Secretary issues the MDDP on or after the 20th day of that month. This total, one time payment for each MDDP issued must be paid in advance and prior to the issuance of the MDDP. Payment must be submitted in the form of a money order, check or credit card charge (with a pre-approved card), made payable to the Secretary of State.

2) Any MDDP holder whose summary suspension is extended or who is re-suspended as provided for in IVC Section 6-206.1 and who applies for and obtains an extension or re-issuance of an MDDP, shall likewise be required to pay the non-refundable fee for the length of the period of extension or re-suspension under the same terms and conditions as stated in subsection (a)(1). Any such suspension will not be terminated until payment of any and all fees due under this Section is made.

3) Any MDDP offender whose driving privileges are otherwise suspended, revoked, cancelled or become otherwise invalid is not eligible to receive an MDDP.

4) Any MDDP shall be invalid and must be surrendered to the Secretary if an MDDP holder's driving privileges subsequently are suspended, revoked, cancelled or become otherwise invalid under any provision of the IVC, during the issuance period of the MDDP. This includes a conviction and subsequent revocation of driving privileges for the DUI arrest that resulted in the issuance of the MDDP. The MDDP offender, including an MDDP holder that surrendered his or her MDDP prior to the suspension, revocation, cancellation or invalidation of driving privileges, may petition, at a formal hearing conducted pursuant to IVC Section 2-118, for a restricted driving permit during the period of suspension, revocation, cancellation or invalidation, if available pursuant to the IVC. In order to obtain a restricted driving permit pursuant to this Section, the MDDP offender must also satisfy the other provisions of this Part. Further, should a restricted driving permit be granted, the MDDP offender may only operate vehicles in which a properly working BAIID has been installed and is subject to all of the provisions of the BAIID program.

5) Any MDDP holder whose MDDP is invalidated as provided in subsection (a)(4), except those MDDP holders cancelled under IVC Section 6-206.1(c-1), may obtain another MDDP upon termination of the sanction that led to the invalidation as long as the offender is still eligible for an MDDP. The offender must notify the Secretary in writing and submit the statutory permit fee. Upon issuance of an MDDP, the MDDP holder is subject to all of the provisions of this Section.

6) The MDDP holder may voluntarily terminate participation in the MDDP program by written notification and surrender of the permit to the Secretary's BAIID Division. This voluntary termination does not in any way affect any sanction imposed under this Section. An offender may also resume participation by notifying the BAIID Division in writing, but may do so only once during the term of the suspension, extension or re-suspension due to a violation of the program.

b) Compliance − Installation of BAIID/Notification to the Secretary

1) The MDDP Holder. Upon the issuance of an MDDP under this Section, the Secretary shall make available a list of certified BAIID providers to the MDDP holder. The MDDP holder may operate the vehicle for 14 days from the issuance date stated on the MDDP without the BAIID installed solely for the purpose of taking the vehicle to a BAIID provider or installer for installation of the BAIID. The MDDP holder must be the individual who takes the vehicle to the installer to have the BAIID installed and must have a reference image taken by the installer at the time of installation. Failure to comply with this requirement will result in the cancellation of the MDDP issued.

2) The Installer/BAIID Provider. A BAIID provider or installer must:

A) Be qualified and comply with all of the procedures and responsibilities set forth in Section 1001.442;

B) Within 7 days after the date of the installation of the BAIID, notify the Secretary, in a manner and form specified by the Secretary, that a BAIID has been installed in the vehicles designated by the MDDP offender;

C) Upon notification from the MDDP holder, as evidenced by the written form from the Secretary that the MDDP holder has been found to be indigent, not charge the MDDP holder for any installation, monthly monitoring, deinstallation fees, or security deposit that exceeds one month's BAIID rental fee. This waiver of charges and fees is limited to one vehicle per MDDP holder;

D) Upon request, make records available to ensure compliance with the required payments to and reimbursements from the Indigent BAIID Fund.

c) Compliance − Driving with BAIID. Any MDDP offender receiving an MDDP under this Section must comply with the following requirements:

1) Operate only vehicles with an installed, operating BAIID certified by the Secretary whether the vehicle is owned, rented, leased, loaned or otherwise in the possession of the MDDP holder, as required by the MDDP issued under this Section.

2) Except when a BAIID has been installed that may be read remotely, either take any and all vehicles operated by the MDDP holder and with a BAIID installed or send the BAIID to the BAIID provider or installer at least every 60 days, which shall be referred to as the monitoring period, commencing with the date of installation, for the purposes of calibration and having a monitor report of the BAIID's activity prepared and sent to the Secretary by the BAIID provider or installer. The monitoring period will be 30 days for any MDDP holder whose summary suspension is extended or who is re-suspended for a violation of the MDDP program.

3) If a BAIID has been installed that permits the MDDP offender to mail in a portion of the BAIID to be read and calibrated, or that allows the BAIID to be read remotely, bring the vehicle into a BAIID installation site at least once every 6 months so that the BAIID and all related wiring and connections may be inspected for signs of tampering or circumvention.

4) Within 5 working days after any service or inspection notification, take the vehicle with the BAIID, installed to the BAIID provider or installer or send the appropriate portion of the BAIID to the BAIID provider or installer as instructed for a monitor report.

5) Maintain a journal of events recording unsuccessful attempts to start the vehicle, failures to successfully complete a running retest, any problems with the BAIID, and the name of the driver operating the vehicle at the time of the event.  If BAIIDs have been installed on multiple vehicles, a separate journal must be kept for each vehicle, recording unsuccessful attempts to start the vehicle, failures to successfully complete a running retest, any problems with the BAIID, and the name of the driver operating the vehicle at the time of the event.

6) Ensure that the BAIID camera is aimed, and the person using the BAIID is situated, so that the camera captures a clear and accurate image of the individual blowing into the BAIID, including a sufficiently wide angle that it will be possible to determine whether the individual blowing into the BAIID is seated in the driver's seat and whether a circumvention device has been inserted into the mouthpiece of the BAIID.

7) Shall not have a BAIID removed or deinstalled from a vehicle prior to notifying the Secretary and surrendering the MDDP to the Secretary or the Secretary's designee.

8) Shall not commit any of the violations listed in subsection (d).

d) Violations. Any of the following, when committed by an MDDP holder, constitutes a violation of the MDDP program:

1) A conviction or court supervision for any of the offenses listed in IVC Section 6-206.1(c-1);

2) Tampering or attempting to tamper with, or unauthorized circumvention of, the BAIID, including the use of any product intended to prevent accurate readings by the BAIID;

3) A violation of IVC Section 6-206.2;

4) 10 or more unsuccessful attempts to start the vehicle with a BAIID installed within a 30 day period, excluding a BrAC reading of 0.05 or more;

5) 5 or more unsuccessful attempts to start the vehicle within a 24 hour period, excluding a BrAC reading of 0.05 or more;

6) A BrAC reading of 0.05 or more;

7) Failing a running retest, or failing to take a running retest;

8) Removing the BAIID without authorization from the Secretary;

9) Failing to utilize the BAIID as required;

10) Failing to submit a BAIID for a monitor report in a timely manner;

11) Failing to bring a vehicle into a BAIID installation site at least once every 6 months so that the BAIID and all related wiring and connections may be inspected for signs of tampering or circumvention;

12) Preventing the camera from taking clear and accurate images of the permittee blowing into the mouthpiece, including a sufficiently wide angle that it will be possible to determine whether the individual blowing into the BAIID is seated in the driver's seat and whether a circumvention device has been inserted into the mouthpiece of the BAIID.

e) Sanctions Upon Commission of a Violation. Upon notification of any of the violations in subsection (d), the Secretary shall take the following action:

1) For a conviction or court supervision for any of the offenses listed in IVC Section 6-206.1(c-1), or a notification from a BAIID provider or installer that a physical inspection of any BAIID permittee's vehicle showed any tampering with or unauthorized circumvention of the BAIID, immediately cancel the MDDP, extend the suspension as provided for in IVC Section 6-206.1(1), and authorize the immediate removal/deinstallation of the BAIID. If the MDDP had expired prior to the Secretary receiving notification of the conviction, supervision or violation, the Secretary shall re-suspend the MDDP offender as provided for in IVC Section 6-206.1(l). The MDDP offender may then file a petition for the issuance of an RDP. The MDDP offender must have a formal hearing pursuant to IVC Section 2-118 and satisfy all the requirements of this Subpart D in order to obtain the permit.

2) For any MDDP holder whose monitor report or other sufficient evidence shows any tampering or unauthorized circumvention of the BAIID, or who fails to bring his or her vehicle in for an inspection pursuant to subsection (c)(3), send the MDDP holder a letter asking for an explanation of the failure to bring the vehicle in for an inspection or an explanation of the tampering or unauthorized circumvention. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, the Secretary shall immediately cancel the MDDP, extend the suspension as provided for in IVC Section 6-206.1(1), and authorize the immediate removal/deinstallation of the BAIID. If the summary suspension is already terminated prior to the MDDP holder failing to bring his or her vehicle in for an inspection pursuant to subsection (c)(3), or prior to the Secretary receiving the monitor report/physical inspection showing the violation, the Secretary shall re-suspend the MDDP offender as provided for in IVC Section 6-206.1(1). The MDDP offender may then file a petition for the issuance of an RDP. The MDDP offender must have a formal hearing pursuant to IVC Section 2-118 and satisfy all the requirements of this Subpart D in order to obtain the RDP.

3) For any MDDP holder whose monitor report shows: 10 or more unsuccessful attempts to start the vehicle with a BAIID installed, within a 30 day period; or 5 or more unsuccessful attempts to start the vehicle with a BAIID installed, within a 24 hour period; or any single BrAC reading of 0.05 or more, send the MDDP holder a letter asking for an explanation of the unsuccessful attempts to start the vehicle or the BrAC reading. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, the Secretary shall extend the summary suspension for 3 months. If the summary suspension is already terminated prior to the Secretary receiving the monitor report showing the violation, the Secretary shall re-suspend for 3 months. Should any monitor report show multiple violations, each violation provided for in this subsection shall be a separate violation requiring a separate 3 month extension or re-suspension.

4) For any MDDP holder whose monitor reports show a failure to successfully complete a running retest, send the MDDP holder a letter asking for an explanation of the failure to successfully complete a running retest. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, the Secretary shall extend the summary suspension for 3 months. If the summary suspension is already terminated prior to the Secretary receiving the monitor report showing the violation, the Secretary shall re-suspend for 3 months.

5) For a removal/deinstallation of a BAIID without authorization, including a removal or deinstallation caused by the MDDP holder's failure to pay lease or rental fees due to the BAIID provider, the Secretary shall immediately cancel the MDDP.

6) For a failure to utilize the BAIID by the MDDP holder as required, the Secretary shall extend the summary suspension for 3 months. If the summary suspension is already terminated prior to the Secretary receiving the monitor report showing the violation, the Secretary shall re-suspend for 3 months.

7) For a failure to submit a BAIID for a monitor report in a timely manner, the following procedure will be followed: unless notified by a BAIID provider that the BAIID has been removed, all monitor reports shall be submitted to the Secretary within 37 days after installation and within every 37 days thereafter. If the Secretary fails to receive an MDDP holder's monitor reports within the 37 days, the Secretary will conduct an informal inquiry (will attempt to contact the BAIID provider and MDDP holder by telephone or e-mail) for the purpose of determining the cause for this failure. If it is determined or if it appears that the MDDP holder failed to take in a vehicle with the BAIID or send the BAIID in for timely monitor reports, then the Secretary will send a letter to the MDDP holder stating that, if the BAIID is not taken in for a monitor report within 10 days after the date of the letter, the Secretary will extend the summary suspension for 3 months, or, if the summary suspension is already terminated prior to the Secretary receiving the monitor report showing the violation, the Secretary will re-suspend for 3 months. If the MDDP holder cannot be located or does not respond to the Secretary's request for information, the MDDP shall be cancelled or, if the MDDP has expired, the Secretary shall re-suspend the MDDP as provided for in IVC Section 6-206.1(l).

8) Violations detected in any one monitoring period shall not, however, result in extensions or re-suspensions totaling more than six months, except as provided in subsection (e)(10).

9) If the MDDP holder is re-suspended for a violation that was not reported to the Secretary until after the termination of the MDDP holder's summary suspension, the MDDP holder may obtain another MDDP by notifying the Secretary in writing and submitting all required fees.

10) When an image shows that the MDDP permittee has utilized any product that allows the permittee to avoid blowing directly into the mouthpiece of the BAIID, or when any step has been taken to prevent a clear and accurate image of the driver and mouthpiece, the Secretary shall extend the summary suspension for 3 months.

f) Hearing to Contest Cancellation of MDDP or Extension of the Summary Suspension. Any MDDP holder whose summary suspension is extended or re-suspended, or whose MDDP is cancelled as provided for in this Section, may request a hearing to contest that action. A written request, along with the $50 filing fee, must be received or postmarked within 30 days from the effective date of the extension, re-suspension or cancellation. The hearing will be conducted as any other formal hearing under this Part.

g) MDDPs − Content. Any MDDPs issued as provided for in this Section shall, in addition to all other requirements, state at a minimum that:

1) The MDDP is issued pursuant to the BAIID requirements of this Section and that a vehicle operated by an MDDP holder must be equipped with a certified, installed, properly operating BAIID;

2) The provisions of the MDDP also allow the MDDP holder to drive to and from the BAIID provider or installer for the purpose of installing the BAIID within 14 days after the issuance date on the MDDP;

3) Once the BAIID is installed, the MDDP holder may drive the vehicle with the BAIID properly installed for any purpose and at any time;

4) If applicable, the MDDP holder qualifies for any modification or waiver of BAIID, as provided in subsection (i), or employment exemption from BAIID, as provided in subsection (j).

h) Use of Monitor Reports. The Secretary shall gather all available monitor reports and images, and any other information relative to the MDDP holder's performance and compliance with the BAIID requirements under this Subpart D. The reports, images and information may be used as evidence at any administrative hearing conducted by the Secretary under this Part.

i) Modification or Waiver of BAIID. Upon request of the MDDP holder, the Secretary may consider a medical or physical BAIID modification or waiver for an MDDP issued under this Section. When an MDDP holder provides a report from a physician stating that the MDDP holder is physically unable to produce an adequate breath sample to operate the BAIID, the Secretary may allow the MDDP holder to install a BAIID that operates with a lower breath sample requirement. When an MDDP holder is the owner of only one vehicle, this modification may also be granted if an immediate family member who resides with the MDDP holder must drive the vehicle and the immediate family member is unable to provide an adequate breath sample to operate the BAIID. The Secretary may, at his or her discretion, obtain a review of the physician's report by the Secretary's Medical Advisory Board.

j) Employment Exemption from BAIID Requirements. In determining whether an MDDP holder is exempt from the BAIID requirements pursuant to the waiver provided for in IVC Section 6-206.1, the following shall apply:

1) The term "employer" shall not include an entity owned or controlled in whole or in part by the MDDP holder or any member of the MDDP holder's immediate family, unless the entity is a corporation and the MDDP holder and the MDDP holder's immediate family own a total of less than 5% of the outstanding shares of stock in the corporation. Immediate family shall include spouse, children, children's spouses, parents, spouse's parents, siblings, siblings' spouses and spouse's siblings;

2) The exemption shall not apply when the employer's vehicle is assigned exclusively to the MDDP holder, or the MDDP holder uses the vehicle for commuting to and from employment or for other personal use and *no person may drive the exempted vehicle more than 12 hours per day, 6 days per week* [625 ILCS 5/6-206.1(a-2)];

3) Appropriate limits will be established for necessary on-the-job driving. The days, hours and mileage limits will not exceed those necessary for the accomplishment of the MDDP holder's primary employment;

4) This exemption is subject to termination if the Secretary obtains or receives credible evidence that it is being abused or violated by the MDDP holder, such as, but not limited to, driving outside the scope of his or her employment, or driving the employer's vehicle from his or her residence to the place of employment. Upon obtaining or receiving credible evidence of the abuse or violation of an exemption, the Secretary shall send the MDDP holder a letter that requests a response to the evidence. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that an abuse or a violation did not occur, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, the Secretary shall immediately terminate the exemption;

5) The Secretary will also inform the MDDP holder whose employment exemption is terminated that he or she remains eligible to have a BAIID installed in his or her personal vehicle and the employer's vehicle without a hearing. Failure to have the BAIID installed by the date designated by the Secretary will result in the termination of the MDDP;

6) The denial of an exemption and the termination of an exemption may be contested pursuant to Section 1001.441(k);

7) An exemption also will be granted to an MDDP holder who can prove that his or her duties include test driving vehicles not owned by the permittee. The exemption will be limited to this purpose, and to no more than a 5 mile radius from the permittee's place of employment.

k) Decertification of BAIID Provider or BAIID and Denial of BAIID Provider Certification or BAIID Certification. The Secretary must notify the MDDP holder of the decertification or denial of certification of a BAIID provider or of a particular type of BAIID. The MDDP holder must then select a new BAIID provider or type of BAIID from the list of approved BAIID providers maintained by the Secretary. The MDDP holder must inform the Secretary of that selection within 7 days after the receipt of notification from the Secretary. The MDDP holder must complete registration with a new BAIID provider and/or installation of a new BAIID within 21 days after the receipt of the notification from the Secretary. Failure to complete these steps within the 21-day period may result in cancellation of the MDDP holder's MDDP. All costs related to any change in a BAIID provider or a BAIID shall be paid by the MDDP holder, unless the Secretary has deemed the MDDP holder indigent.

l) Indigent BAIID Fund

1) Any BAIID provider who installs a BAIID under the MDDP program must pay 5% of the total gross revenue received by each contract entered into with an MDDP holder who is not found to be indigent by the Secretary, referred to in this subsection as the surcharge.

A) The surcharge shall include only those fees normally charged an MDDP holder for installation, monthly rental and monitoring, and deinstallation of the BAIID during the term of the MDDP holder's statutory summary suspension.

B) The surcharge shall be submitted to the Secretary by the 8th of each month and shall include all surcharges incurred during the previous month. The surcharge must be submitted in the form of a check, made payable to the Secretary of State, or by electronic transfer as agreed to by the Secretary and the BAIID provider.

C) Should the summary suspension of an MDDP holder be extended or a re-suspension issued under the MDDP program and the holder continue to participate in the program, the surcharge is due for the period of extension or re-suspension.

2) Any BAIID provider who installs a BAIID under the MDDP program for an MDDP holder who has been found to be indigent by the Secretary may apply for reimbursement for any fees incurred as set out in subsection (b)(2)(C). A provider must submit an invoice to the Secretary by the 8th of the month following the end of each quarter of the Secretary of State's fiscal year, which must include the name and driver's license number of each indigent client, as well as a brief description of the services provided and the date those services were rendered. The Secretary will authorize payments in accordance with IVC Section 6-206.1(o). No payment for the quarter may be authorized if the provider fails to submit an invoice within the time set forth in this subsection (l)(2) or if the provider fails to submit a check or electronic transfer for the surcharge within the time frame set forth in subsection (l)(1)(B). If a provider has submitted an invoice to the Secretary that under-reports the number of indigent clients served in the previous quarter, the provider may not submit a subsequent invoice seeking reimbursement for services provided to the unreported indigent clients.

3) The Secretary may audit the records of BAIID providers or installers to ensure compliance with the required payments to and reimbursements from the Indigent BAIID Fund.

4) An MDDP offender may be declared indigent by the Secretary if the MDDP offender's total monthly income is 150% or less of the federal poverty guidelines, as evidenced by a certified transcript of the United States or State of Illinois tax return for the most recently completed calendar year.

A) For an MDDP offender who has not filed a United States or State of Illinois tax return for the most recently completed calendar year, indigency may be declared if:

i) The MDDP offender is currently receiving Temporary Assistance to Needy Families (TANF) benefits, as evidenced by documentation from the Illinois Department of Human Services;

ii) The MDDP offender is currently receiving Supplemental Nutrition Assistance Program (SNAP) benefits, as evidenced by documentation from the Illinois Department of Human Services.

B) For the MDDP offender who has not filed a United States or State of Illinois tax return for the most recently completed calendar year and is not currently receiving TANF or SNAP benefits, indigency may be declared if the MDDP offender is receiving Supplemental Security Income (SSI) from the Social Security Administration and the MDDP offender completes an affidavit under penalty of perjury swearing the total amount of income received from all sources, including SSI, is 150% or less of the federal poverty guidelines.

5) An MDDP holder's indigency status shall be valid for the length of the MDDP. Any MDDP holder whose summary suspension is extended beyond the length of the MDDP, who wishes to continue participation in the MDDP program and wishes to be declared indigent, must submit current documentation as set forth in subsection (l)(4).

m) Reciprocity with Other States. The Secretary will honor the BAIID requirements imposed by other states on Illinois drivers and drivers licensed in other states, for offenses committed in other states, and will reciprocate other states' recognition of BAIID requirements imposed by Illinois on drivers licensed in Illinois, or licensed in other states for offenses committed in Illinois.

(Source: Amended at 44 Ill. Reg. 14243, effective August 19, 2020)