

WSR 24-10-043
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed April 24, 2024, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-22-063.

Title of Rule and Other Identifying Information: WAC 314-55-080
Medical cannabis endorsement.

Hearing Location(s): On June 5, 2024, at 10:00 a.m. All public
liquor and cannabis board (board) activity will be held in a "hybrid"
environment. This means that the public will have options for in-per-
son or virtual attendance. The boardroom at the headquarters building
in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-
person attendance. The public may also login using a computer or de-
vice, or call in using a phone, to listen to the meeting through the
Microsoft Teams application. The public may provide verbal comments
during the specified public comment and rules hearing segments. TVW
also regularly airs these meetings. Please note that although the
boardroom will be staffed during a meeting, board members and agency
participants may continue to appear virtually. For more information
about board meetings, please visit https://lcb.wa.gov/Boardmeetings/
Board meetings.

Date of Intended Adoption: No earlier than June 18, 2024.

Submit Written Comments to: Daniel Jacobs, Rules and Policy Coor-
dinator, P.O. Box 43080, Olympia, WA 98504-3080, email
rules@lcb.wa.gov, fax 360-704-5027, by May 29, 2024.

Assistance for Persons with Disabilities: Contact Anita Bingham,
ADA coordinator, human resources, phone 360-664-1739, fax
360-664-9689, TTY 711 or 1-800-833-6388, email
anita.bingham@lcb.wa.gov, by May 29, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: The changes below are meant to accom-
plish three main goals: (1) Creating a requirement of posting cannabis
consultant availability alongside required store hours; (2) allow med-
ical cannabis endorsement holders to have cannabis products that com-
ply with chapter 246-70 WAC "on order" to satisfy the "in stock" re-
quirement; and (3) create a 30-day "cure period" to allow medical can-
nabis endorsement holders to correct regulatory noncompliance before
an endorsement will be discontinued for noncompliance.

Language about medical cannabis endorsement holders being able to
sell products below 0.3 percent THC is being removed from the rule to
remove redundancy because it remains in statute at RCW 69.50.378.

Table with 4 columns: Section, Current Rule Language, Proposed New Language, Rule Necessity. It details changes to subsections (3)(c) and (3)(b) regarding cannabis consultant requirements and THC limits.

Section	Current Rule Language	Proposed New Language	Rule Necessity
(3)(d)	Maintain at all times, a representative assortment of cannabis products necessary to meet the needs of qualified patients and designated providers;	Have in stock at all times, or on order, cannabis products that comply with chapter 246-70 WAC;	Improving clarity and removing unnecessary additional wording that caused confusion and required regulatory guidance and interpretation. Added language indicating that having compliant cannabis on order satisfies this requirement.
(3)(f)	Demonstrate the ability to enter qualifying patients and designated providers in the medical cannabis authorization database established by the department of health;	Maintain the ability to enter qualifying patients and designated providers in the medical cannabis authorization database established by the department of health;	Improving clarity without changing effect.
(4)	<b>A cannabis retailer holding a medical cannabis endorsement may sell products with a THC concentration of 0.3 percent or less.</b> The licensee may also provide these products at no charge to qualifying patients or designated providers.	The licensee may provide cannabis products complying with chapter 246-70 WAC at no charge to qualifying patients or designated providers.	Improving clarity without changing effect. Medical cannabis endorsement holders remain able to sell products with THC less than 0.3 percent per RCW 69.50.378.
(6)	Failure to comply with subsections (3) and (5) of this section may result in suspension or revocation of the medical cannabis endorsement.	(a) Noncompliance with the requirements of subsection (3) of this section may result in the discontinuance of the medical cannabis endorsement. (b)(i) After being notified of noncompliance with the requirements of this section by the board, the endorsement holder shall have at least seven calendar days and no more than 30 calendar days to demonstrate compliance with this section. If noncompliance remains after the deadline identified by the board, the endorsement is discontinued. (ii) If a licensee applies for a medical cannabis endorsement after it has previously been discontinued pursuant to (b)(i) of this subsection, the application and documentation verifying compliance with the requirements of this section must be submitted to the board.	Replacing words "suspension" and "revocation" with discontinuance. Providing a cure period to address noncompliance with regulatory requirements. The length of the cure period will depend on the nature of the noncompliance. Continued noncompliance after the cure period results in discontinuance of the endorsement. Subsequent application for an endorsement requires a demonstration of compliance with the regulatory requirements
(7)	Noncompliance with subsection (5) of this section may result in the discontinuance of the medical cannabis endorsement.		Creating a new subsection to separate language from old subsection (6).

Reasons Supporting Proposal: Creating the additional cannabis consultant hours posting requirement will help assist patients who currently must call multiple retailers to find available cannabis consultants. Allowing for consultants to be available "by appointment" within a specified time frame allows for the consultants to still accomplish other business tasks while remaining available to serve patients as needed.

Adding the "or on order" wording to the "in stock" requirement currently at WAC 314-55-080 (3) (d) will allow retailers who do not have any cannabis complying with department of health requirements in stock at a given time to remain compliant with this requirement by having an order in place for new product. This wording was suggested during a stakeholder engagement session by a member of the public.

Creating the variable cure period will allow for retailers who become noncompliant a window of time to address the noncompliance before the endorsement is discontinued. The amount of time needed may vary depending on the noncompliance at issue, as it may take more time to hire a new cannabis consultant than it would to fix a card machine or get more compliant cannabis in stock. This is broadly consistent with current internal agency procedures for addressing noncompliance by medical cannabis endorsement holders. This also balances flexibility and an opportunity to resume compliance without immediate discontinuance of an endorsement, while at the same time providing a structure for discontinuance for retailers who are unable to maintain regulatory compliance.

Lastly, while a retailer who has their medical cannabis endorsement discontinued for noncompliance remains able to apply for the endorsement again, an additional required showing must be submitted to the board with the request to add the medical cannabis endorsement, as a measure intended to address what was previously a compliance issue.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Statute Being Implemented: RCW 69.50.375.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Daniel Jacobs, Rules and Policy Coordinator, 1025 Union Avenue, Olympia, WA 98504, 360-480-1238; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98504, 360-664-1753; and Enforcement: Chandra Wax, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98504, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amended rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). The board is not a listed agency under RCW 34.05.328 (5)(a)(i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5)(a)(ii).

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. Here, the board considered potential administrative costs that a licensee may incur complying with the proposed rules.

The board applied the North American Industry Classification System (NAICS) code 459991 for marijuana stores, recreational or medical. This is defined by NAICS as follows: This United States industry comprises establishments primarily engaged in retailing cigarettes, electronic cigarettes, cigars, tobacco, pipes, and other smokers' supplies. The industry description for this code is presented in the table below, and can be accessed at <https://www.census.gov/naics/?input=marijuana&year=2022&details=459991>.

The board applied a default estimated compliance cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects a conservative estimate of \$1,000.00 for every cannabis retailer with an existing medical cannabis endorsement to familiarize themselves with the amended rules and change the sign on the outside of the premises to comply with the new requirements in the proposed rule.

Per RCW 19.85.020(2), a minor cost means a cost per business that is less than three-tenths of one percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll. According to department of revenue (DOR) data from 2022, the total gross business income for NAICS code 459991 was \$583,645,979.00 for 521 businesses. That produces an average annual gross business income of \$1,120,241.8023. Three-tenths of one percent of \$1,120,241.8023 is \$3,360.725, rounding up to \$3,360.73.

<u>2022 Industry NAICS Code</u>	<u>Estimated Cost of Compliance</u>	<u>Industry Description</u>	<u>NAICS Code Title</u>	<u>Minor Cost Estimate</u>	<u>1% of Avg Annual Payroll (Threshold)</u>	<u>0.3% of Avg Annual Gross Business Income (Threshold)</u>
459991	\$1,000.00	Marijuana stores, recreational or medical	Tobacco, Electronic Cigarette, and Other Smoking Supplies Retailers	\$3,360.73	Unavailable*	\$3,360.73 2022 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the threshold for tobacco, electronic cigarette, and other smoking supplies retailers, which according to the NAICS website above, includes cannabis retailers with medical cannabis endorsements. Therefore, implementation of this amended rule is not anticipated to result in more-than-minor costs on businesses as defined in RCW 19.85.020(2).

DOR - Washington State Department of Revenue. DOR data available at <https://apps.dor.wa.gov/ResearchStats/Content/GrossBusinessIncome/Results.aspx?Year=2022AN,&Code1=450000&Code2=460000&SumbY=n6&SicNaics=2&Format=HTML>

\* Average annual payroll data was unavailable due to confidentiality with other state agency data.

A copy of the detailed cost calculations may be obtained by contacting Daniel Jacobs, Rules and Policy Coordinator, P.O. Box 43080, Olympia, WA 98504-3080, phone 360-480-1238, fax 360-704-5027, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

April 24, 2024  
David Postman  
Chair

OTS-5156.5

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

**WAC 314-55-080 Medical cannabis endorsement.** (1) **A medical cannabis endorsement added to a cannabis retail license allows the cannabis retail licensee to:**

(a) Sell cannabis for medical use to qualifying patients and designated providers; and

(b) Provide cannabis at no charge, at their discretion, to qualifying patients and designated providers.

(2) Qualifying patients between 18 and 21 years of age with a recognition card may enter and remain on the premises of a retail outlet holding a medical cannabis endorsement and may purchase products for their personal medical use. Qualifying patients who are under the age of 18 with a recognition card and who accompany their designated providers may enter and remain on the premises of a retail outlet holding a medical cannabis endorsement, but may not purchase products for their personal medical use. Only a designated provider may purchase products for a qualifying patient under the age of 18 who holds a valid recognition card.

(3) **To maintain a medical cannabis endorsement in good standing, a cannabis retailer must:**

(a) Follow all rules adopted by the department of health regarding retail sales of medical cannabis;

(b) Have a consultant on staff in accordance with ~~((department of health rules))~~ chapter 246-72 WAC;

(c) (i) Have consulting service hours for entering qualifying patients into the medical cannabis database posted alongside hours of operation as required in WAC 314-55-055;

(ii) The requirement in (c) (i) of this subsection can be met by posting a window of time where appointments with cannabis consultants can be scheduled;

(d) Prohibit the medical use of cannabis by anyone at the retail outlet at all times, including medical use by qualifying patients;

~~((d) Maintain))~~ (e) Have in stock at all times, ((a representative assortment of)) or on order, cannabis products ((necessary to meet the needs of qualified patients and designated providers)) that comply with chapter 246-70 WAC;

~~((e))~~ (f) Not market cannabis concentrates, useable cannabis, or cannabis-infused products in a way that make them especially attractive to minors;

~~((f) Demonstrate))~~ (g) Maintain the ability to enter qualifying patients and designated providers in the medical cannabis authorization database established by the department of health;

~~((g))~~ (h) Issue recognition cards and agree to enter qualifying patients and designated providers into the database in compliance with the department of health standards;

~~((h))~~ (i) Keep records to document the validity of tax exempt sales as prescribed by the department of revenue for a minimum of five years. For the documentation requirements in RCW 69.50.375 (3) (e), licensees are not required to separately keep copies of the qualifying patient's or designated provider's recognition card because this information is stored in the medical cannabis authorization database;

~~((i))~~ (j) Train employees on the following:

(i) Procedures regarding the recognition of valid authorizations and the use of equipment to enter qualifying patients and designated providers into the medical cannabis authorization database;

(ii) Recognition of valid recognition cards; and

(iii) Recognition of strains, varieties, THC concentration, CBD concentration, and THC to CBD ratios of cannabis concentrates, useable cannabis, and cannabis-infused products available for sale when assisting qualifying patients and designated providers at the retail outlet.

(4) ~~((A cannabis retailer holding a medical cannabis endorsement may sell products with a THC concentration of 0.3 percent or less.))~~ The licensee may ~~((also))~~ provide ~~((these))~~ cannabis products complying with chapter 246-70 WAC at no charge to qualifying patients or designated providers.

(5) **Unlicensed practice of medicine.** No owner, employee, or volunteer of a retail outlet and holding a medical cannabis endorsement may:

(a) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by use of cannabis products or any other means or instrumentality; or

(b) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of cannabis products.

(6) ~~((Failure to comply with))~~ (a) Noncompliance with the requirements of subsection((s)) (3) ((and (5))) of this section may result in ((suspension or revocation)) the discontinuance of the medical cannabis endorsement.

(b) (i) After being notified of noncompliance with the requirements of this section by the board, the endorsement holder shall have at least seven calendar days and no more than 30 calendar days to demonstrate compliance with this section. If noncompliance remains after the deadline identified by the board, the endorsement is discontinued.

(ii) If a licensee applies for a medical cannabis endorsement after it has previously been discontinued pursuant to (b) (i) of this subsection, the application and documentation verifying compliance with the requirements of this section must be submitted to the board.

(7) Noncompliance with subsection (5) of this section may result in the discontinuance of the medical cannabis endorsement.