

WSR 22-11-015

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed May 9, 2022, 11:46 a.m., effective June 9, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-72-010, 246-72-030, 246-72-050, 246-72-080, 246-72-090, 246-72-100, 246-72-110, and 246-72-120, medical marijuana consultant certification. The department of health is adopting amendments to various sections within chapter 246-72 WAC to enhance and clarify training program requirements, education and other requirements of an instructor; continuing education, practice parameters of a medical marijuana certified consultant, and other housekeeping amendments. Specific changes include a continuing education training to be provided by the department, the addition of a self-study option of continuing education, and the allowance of other types of training instructors such as professional teachers, consultant practice parameters regarding free samples, and open consumption.

The adopted rule will provide certified consultants with a solid understanding of their role and knowledge of industry regulations, rules, and laws to ensure accurate information is being shared on the front end with the qualifying patients, designated providers, and consumers they are assisting. The revisions will clarify inconsistencies and knowledge gaps in medical marijuana consultant training per chapter 69.51A RCW by clearly defining expected training standards, necessary certification requirements, and practice parameters for consultants in chapter 246-72 WAC.

Citation of Rules Affected by this Order: Amending WAC 246-72-010, 246-72-030, 246-72-050, 246-72-080, 246-72-090, 246-72-100, 246-72-110, and 246-72-120.

Statutory Authority for Adoption: RCW 69.51A.290.

Adopted under notice filed as WSR 22-03-054 on January 14, 2022.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-72-110 (1)(a)(i)(C) was amended to insert the phrase "for recreational and compliant marijuana products" as a clarification of intended training requirements, but does not change to [the] effect of the rule.

A final cost-benefit analysis is available by contacting Shannon Angell, P.O. Box 47850, Olympia, WA 98504, phone 360-236-2820, fax 360-236-2901, TTY 711, email shannon.angell@doh.wa.gov, website medicalmarijuana@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: May 5, 2022.

Kristin Peterson, JD
Deputy Secretary

Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-3141.6

AMENDATORY SECTION (Amending WSR 16-07-086, filed 3/17/16, effective 3/18/16)

WAC 246-72-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Approved training program" means a school, college, or program approved by the secretary that meets the requirements of this chapter.

(2) "Certificate holder" means a person holding a valid medical marijuana consultant certificate issued by the secretary under chapter 69.51A RCW and this chapter.

(3) "Customer" means any patron of a retail outlet licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375.

(4) "Department" means the Washington state department of health.

(5) "Designated provider" means the same as defined in RCW 69.51A.010.

(6) "Marijuana product" means marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products as defined in RCW 69.50.101.

~~((+6))~~ (7) "Qualifying patient" or "patient" means the same as defined in RCW 69.51A.010.

(8) "Secretary" means the secretary of the department of health or the secretary's designee.

[Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-010, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-030 Practice parameters. (1) A certificate holder may only provide services when acting in the capacity of an owner, employee, or volunteer of a retail outlet licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375.

(2) A certificate holder may:

(a) Perform regular job duties and business functions including, but not limited to, assisting a customer with the selection of marijuana product and other items sold at the retail outlet;

(b) Assist a ~~((customer))~~ qualifying patient or designated provider with the following:

(i) Selection of marijuana products and other items sold at the retail outlet that may benefit the ~~((customer's))~~ qualifying patient's terminal or debilitating medical condition;

~~((b) Describe))~~ (ii) Understanding the risks and benefits of marijuana products and other items sold at the retail outlet;

~~((e) Describe))~~ (iii) Understanding the risks and benefits of methods of administration of marijuana products sold at the retail outlet. Whenever practicable, a certificate holder shall encourage methods of administration other than smoking;

~~((d) Advise a customer))~~ (iv) Advice about the safe handling and storage of marijuana products, including strategies to reduce access by minors; ~~(and~~

~~(e) Provide))~~ (v) Instruction and demonstration ~~((to a customer))~~ about proper use and application of marijuana products ~~((. However, nothing in this section allows a certificate holder to:~~

~~(i) Provide free samples of a marijuana product to a customer except pursuant to RCW 69.50.375;~~

~~(ii) Open or allow a customer to open a marijuana product on the premises;~~

~~(iii) Consume or allow a customer to consume a marijuana product on the premises); and~~

(vi) Processing the medical marijuana authorization form for the purpose of adding the qualifying patient or designated provider to the database according to WAC 246-71-020.

(3) When discussing a marijuana product with a ~~((customer))~~ qualifying patient or their designated provider, a certificate holder shall refer to the product using the cannabinoid profile labeling required by the Washington state liquor and cannabis board in addition to the represented strain name.

(4) A certificate holder shall not:

(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 marijuana products or any other means or instrumentality;

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

(c) Solicit or accept any form of remuneration directly or indirectly, overtly or covertly, in cash or any other form in return for recommending a certain product, producer, processor, clinic, or health care practitioner;

~~(d) ((Provide medical marijuana consultant services in any capacity other than as an owner, employee, or volunteer of retail outlets licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375;~~

~~(e)) Provide medical marijuana consultant services at any location other than at retail outlets licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375 for which the certificate holder serves as an owner, employee, or volunteer; ((or~~

~~(f))~~ (e) Create ~~((his or her))~~ their own recognition card pursuant to chapter 246-71 WAC;

(f) Provide free samples of a marijuana product to a customer except pursuant to RCW 69.50.375;

(g) Open or allow a customer, including qualifying patients and designated providers to open a marijuana product on the premises; or

(h) Consume or allow a customer, including qualifying patients and designated providers, to consume any marijuana product on the premises.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-030, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-030, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 16-07-086, filed 3/17/16, effective 3/18/16)

WAC 246-72-050 Cooperation with investigation. (1) The secretary will notify an applicant or credential holder upon receipt of a complaint, except when the notification would impede an effective investigation. Upon request by the secretary, the applicant or credential holder shall submit a written statement about that complaint.

(2) An applicant or certificate holder must produce documents, records, or other items that are within ~~((his or her))~~ their possession or control within ~~((twenty-one))~~ 21 calendar days of service of a request by the secretary. If the ~~((twenty-one))~~ 21 calendar day limit results in a hardship upon the applicant or credential holder, ~~((he or she))~~ they may request, for good cause, an extension not to exceed ~~((thirty))~~ 30 additional calendar days.

(3) Failure to submit a full and complete written statement explaining the matter contained in a complaint pursuant to subsection (1) of this section or to comply with a request made pursuant to subsection (2) of this section may result in action by the secretary to refuse the application or revoke or suspend the certificate.

[Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-050, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-080 Renewals and updating license information. (1) Certificates must be renewed every year on the certificate holder's birthday. Initial certificates issued within ~~((ninety))~~ 90 days of the certificate holder's birthday do not expire until the person's next birthday.

(2) Renewals:

(a) Prior to the certificate expiration date, courtesy renewal notices are mailed to the address on file. Certificate holders must return the renewal notice when renewing their credential. Failure to receive a courtesy renewal notice does not relieve or exempt the renewal requirement.

(b) The certificate holder must attest to completion of annual certification requirements, including current CPR certification as outlined in WAC 246-72-020.

(c) Renewal fees are accepted by the department no sooner than ~~((ninety))~~ 90 days prior to the expiration date.

(3) Duplicate certificate: A certificate holder may obtain a duplicate certificate by submitting a written request to the department and paying the fee as required in WAC 246-72-990.

(4) Name changes: It is the responsibility of each certificate holder to maintain ~~((his or her))~~ their correct name on file with the

department. Requests for name changes must be submitted in writing to the department along with documentation showing the name was legally changed.

(5) Address changes: It is the responsibility of each certificate holder to maintain (~~his or her~~) their current address on file with the department. Requests for address changes must be made in writing. The mailing address on file with the department will be used for mailing of all official matters to the certificate holder.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-080, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-080, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-090 Expired certificate. (1) A certificate holder may not practice at any time while (~~his or her~~) their certificate is expired. The certificate is expired if the certificate holder does not renew on or before the expiration date. Any renewal that is postmarked or presented to the department after midnight on the expiration date is expired and is subject to a late renewal penalty fee.

(2) If the certificate has been expired for more than three months and less than three years, the certificate holder must:

- (a) Complete a late renewal application form;
- (b) Pay the renewal fee;
- (c) Pay the late renewal penalty fee;
- (d) Pay the expired certificate reissuance fee;
- (e) If requested by the secretary, provide proof of successful completion of required continuing education (~~under~~) as defined in WAC 246-72-100;
- (f) Provide proof of current CPR certification as defined in WAC 246-72-020; and
- (g) Provide any other documentation required by the secretary.

(3) If the certificate has been expired for three years or more, the certificate holder must:

- (a) Complete an initial application form;
- (b) Pay the current application fee;
- (c) Retake and provide proof of successful completion of (~~an approved~~) a training program approved under WAC 246-72-110 within the prior six months;
- (d) Provide proof of current CPR certification; and
- (e) Provide any other documentation required by the secretary.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-090, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-090, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 16-07-086, filed 3/17/16, effective 3/18/16)

WAC 246-72-100 Continuing education. (1) A certificate holder ~~((s))~~ must complete a minimum of ~~((ten))~~ 10 hours of continuing education each year in order to renew the certificate.

(2) Two of the 10 hours must be successful completion of a two-hour continuing education course offered by the department.

(3) Eight of the 10 continuing education hours may be earned through seminars, lectures, workshops, and professional conferences. Continuing education credits may be earned through in-person ~~((or))~~, distance learning, or self-study.

(a) Distance learning includes correspondence courses, webinars, audio/video broadcasting, audio/video teleconferencing e-learning, or webcasts.

(b) Self-study includes the use of multimedia devices or the study of books, research materials, marijuana industry tours or other publications. To receive credit for self-study, the credential holder shall draft and provide a one page, single spaced, 12-point font synopsis of what was learned. The time spent writing the synopsis is not reportable. Two hours of credit is allowed per report, and no more than one report may be submitted per reporting period.

(4) (a) Acceptable continuing education topics ~~((are))~~ for the hours required in subsection (3) of this section include:

~~((a))~~ (i) Washington state laws and rules relating to marijuana;

~~((b—Science-based))~~ (ii) Scientific research, studies, or similar information about marijuana;

~~((e))~~ (iii) Addiction and substance abuse;

~~((d))~~ (iv) Patient communication skills;

~~((e))~~ (v) Professional ethics and values;

(vi) Pesticides and chemicals in the context of marijuana agriculture; or

(vii) Qualifying medical conditions.

~~((3))~~ (b) Continuing education topics may not include:

~~((a))~~ (i) Business and management courses;

~~((b))~~ (ii) Health care training unrelated to marijuana; or

~~((e))~~ (iii) Any topic unrelated to the practice parameters of a medical marijuana consultant.

~~((4))~~ (5) Continuing education hours ~~((will))~~ may not be carried over from one reporting period to another.

~~((5))~~ (6) A certificate holder ~~((must))~~ shall provide acceptable documentation of completion of continuing education hours upon request of the secretary or an audit. Acceptable forms of documentation ~~((are))~~ include:

(a) Transcripts;

(b) Certificate of completion; ~~((or))~~

(c) If applicable for self-study, a type-written essay in accordance with subsection (3)(b) of this section; or

(d) Other formal documentation, which include ~~((s))~~ the following:

(i) Participant's name;

(ii) Course title;

(iii) Course content;

(iv) Date(s) of course;

(v) ~~((Provider's))~~ Course provider's or instructor's name(s); and

(vi) Signature of the program sponsor or course instructor. Distance learning courses and self-study activities outlined in subsection (3)(b) of this section are exempt from the signature requirement.

~~((+6))~~ (7) A certificate holder ~~((must))~~ shall verify compliance by submitting a signed declaration of compliance.

~~((+7))~~ (8) At the secretary's discretion, up to ~~((twenty-five))~~ 25 percent of certificate holders ~~((are))~~ may be randomly audited for continuing education compliance after ~~((the))~~ a credential is renewed. If identified for an audit, it is the certificate holder's responsibility to submit documentation of completed continuing education activities at the time of the audit. Failure to comply with the audit documentation request or failure to supply acceptable documentation within ~~((sixty))~~ 60 days may result in licensing action, up to and including suspension or revocation of the certificate.

~~((+8))~~ (9) A certificate holder must maintain records of continuing education completion for at least four years.

[Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-100, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-110 Training program requirements. (1) A training program~~((s))~~ must include:

(a) A minimum of ~~((twenty))~~ 20 total instruction hours in the following subjects:

(i) A minimum of five hours ~~((about))~~ of instruction on Washington state laws and rules relating to marijuana to include, but not be limited to, the following topics:

(A) Qualifying patient and designated provider cannabis home grow laws;

(B) Patient and designated provider marijuana purchase and possession limits;

(C) Marijuana product compliance, quality assurance testing, and labeling requirements for recreational and compliant marijuana products, including pesticide labeling as defined under chapter 246-70 WAC;

(D) Pesticide use on cannabis products; and

(E) The medical marijuana authorization process;

(ii) A minimum of two hours ~~((about))~~ on qualifying conditions and the common symptoms of each;

(iii) A minimum of two hours ~~((about))~~ on the short- and long-term positive and negative effects of cannabinoids;

(iv) A minimum of five hours ~~((about))~~ on products that may benefit qualifying patients based on the patient's condition, any potential contraindications and the risks and benefits of various routes of administration;

(v) A minimum of two hours ~~((about))~~ on safe handling of marijuana products, including strategies to reduce access by minors;

(vi) A minimum of two hours ~~((about))~~ on ethics and ~~((customer))~~ patient privacy and rights; and

(vii) A minimum of two hours ~~((about))~~ on the risks and warning signs of overuse, abuse and addiction.

(b) An examination comprised of at least five questions for each hour of instruction must be given for each subject. The applicant must pass the examination for each subject with a minimum score of (~~seventy~~) 70 percent. Questions must be randomly selected from a sufficient supply of questions to ensure the validity of the examination. The secretary reserves the right to approve or deny individual questions and answers.

(2) Training may be provided in-person or electronically. If the training is provided electronically, students must have real-time access to the instructor during at least half of the instruction hours for each subject.

(3) Instructors must have demonstrated knowledge and experience related to marijuana and to the subject matter, and hold:

(a) An active license to practice as a health care professional as defined in RCW 69.51A.010(5). A licensee whose credential is placed under a disciplinary order must request review and secretary approval to begin or continue as an instructor for the approved training program;

(b) An active license to practice law in the state of Washington;

(c) A bachelor's degree or higher from an accredited college or university in:

(i) Agriculture, botany, or horticulture; (~~or~~

~~(d) A bachelor's degree or higher in~~) (ii) Nursing ((and)), provided the instructor also holds an active license to practice as a registered nurse under chapter 18.79 RCW; or

(iii) Any other discipline, provided the intended instructor also submits a curriculum vitae with a written statement which demonstrates at least seven years of experience in the regulated cannabis industry.

(4) An owner, agent, principal, or instructor of a training program shall not have a direct or indirect financial interest in a marijuana business licensed by the Washington state liquor and cannabis board under chapter 69.50 RCW.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-110, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-110, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-120 Approval of training program. The secretary will consider for approval any training program which meets the requirements as outlined in this chapter.

(1) The authorized representative of the training program shall request approval on an application provided by the department.

(2) The application for approval of a training program must include, but is not limited to, documentation required by the secretary (~~(pertaining))~~ related to:

(a) Detailed syllabus;

(b) Identification and qualifications of instructors;

(c) Training locations and facilities;

(d) Outline of curriculum plan specifying all subjects, and the length in hours each subject is taught;

(e) Class objectives;

- (f) Whether the training will be provided in-person or electronically;
- (g) Methods of evaluating the course and instructors by the training program and training participants;
- (h) Policies and procedures for maintaining training and testing records; and
- (i) A sample of the training program's certificate of successful completion. At minimum, the certificate must contain the following information:
- (i) Name and license number of the training program;
 - (ii) Name of the student; and
 - (iii) Date the student successfully completed the program.
- (3) Any training program that is required to be licensed by private vocational education under chapter 28C.10 RCW or Title 28B RCW, or any other statute, must complete these requirements before being considered by the secretary for approval.
- (4) The secretary will evaluate the application and may conduct a site inspection of the training program prior to granting approval.
- (5) Upon the evaluation of a complete application, the secretary will grant or deny approval.
- (6) If the secretary notifies the training program of the secretary's intent to deny an application, the training program, through its authorized representative, may request an adjudicative proceeding. A request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice and be served on and received by the department within (~~twenty-eight~~) 28 days of the applicant's receipt of the adverse notice. The authorized representative of the training program may submit a new application for the secretary's consideration.
- (7) Training and testing records must be kept for a minimum of three years. The secretary may audit the records at any time.
- (8) The authorized representative of an approved training program shall notify the secretary in writing of all changes with respect to information provided in the application, including changes in instructors or the instructor's credential status, within (~~thirty~~) 30 days of such changes.
- (9) The secretary may inspect, audit or review an approved training program at reasonable intervals for compliance or to investigate a complaint. The secretary may withdraw approval if the secretary finds failure to comply with the requirements of statute, administrative rules, or representations in the application.
- (10) If the secretary notifies an approved training program of the secretary's intent to revoke approval, the training program, through its authorized representative, may request an adjudicative proceeding. A request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice and be served on and received by the department within (~~twenty-eight~~) 28 days of the applicant's or license holder's receipt of the adverse notice. If a request for adjudicative proceeding is not received by the department within (~~twenty-eight~~) 28 days of the date of the training program's receipt of the adverse notice, the secretary's decision is final. The authorized representative of the training program must provide proof that the deficiencies which resulted in withdrawal of the secretary's approval have been corrected before requesting reapproval. Training programs seeking reapproval shall follow the requirements outlined in this section.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-120, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-120, filed 3/17/16, effective 3/18/16.]