



Concise Explanatory Statement, Marijuana Consultants

Summary of comments and agency responses regarding proposed rules filed under WSR 22-03-054.

Effecting 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

TOPIC / CITATION	COMMENTS ON PROPOSED RULES	AGENCY RESPONSE
<p>MMJC/patient required notice</p> <p>WAC 246-72-030</p>	<p>Language should be added to the rule requiring consultants remind patients they are limited to 15 plants to grow at home if they are not in a registered cooperative.</p> <p>Further information should also be provided by consultants so that patients understand their limits, privileges and rights relating to their authorization form or recognition card.</p>	<p>While consultants are an avenue to reach part of the marijuana patient population, not all patients register in the database. A patient’s authorizing physician would be the best contact for the patient when discussing plant limits and allowances for their specific qualifying condition. Consultants only review the authorization on the initial visit. Any subsequent visit the consultant may not know the qualifying condition. However, they are able to speak to the limit allowed as referenced on the medical marijuana card.</p> <p>The Department of Health (department) is open to adding this information to the patient authorization form since that is the primary intersection between patients and their ability to grow plants for medical purposes. The department will also include information about patient rights and responsibilities in the two-hour department led continuing education training for medical marijuana consultants.</p> <p>Both recommendations may be addressed administratively without rulemaking.</p> <p><i>Was the rule changed as a result of these comments?</i> No.</p>

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WAC 246-72-030 Practice parameters	The department should allow consultants to discuss with patients marijuana product structure and function claims as they present on the labels and packaging of compliant products.	<p>The Washington State Liquor and Cannabis Board (LCB) has clarified in WAC 314-55-105 that structure and function claims are allowed on compliant product packaging. Discussing product packaging and labels is currently within the scope of practice for a consultant assisting a patient in the selection of marijuana products.</p> <p><i>Was the rule changed as a result of these comments? No</i></p>
WAC 246-72-030 Practice parameters	Consultants should be allowed to offer virtual consultations to patients provided the consultant is still located in the retail store.	<p>The department has reviewed laws and rules regarding consultations. Nothing prohibits a virtual consultation provided the medical marijuana consultant is on the premises of the medically endorsed retail store. The patient is still required to complete the initial appointment in person in order to be issued a medical marijuana card per RCW 69.51A.030(2). Unless the patient's practitioner has authorized compassionate care renewal in accordance with RCW 69.51A.030, an in person visit to the store will be required annually.</p> <p><i>Was the rule changed as a result of these comments? No</i></p>
WAC 246-72-080 Renewals and updating license information	Allow a consultant's change of address to be reported online instead of certificate holders having to send a letter.	<p>Consultants can update their contact information online at the department's website.</p> <p><i>Was the rule changed as a result of these comments? No</i></p>
WAC 246-72-090 Expired certificate	The \$50 late fee a licensee must pay to renew an expired certificate should be removed as it may be a barrier to the profession.	<p>Late renewals can not be processed automatically like on-time renewals. Therefore, penalty fees are charged to recover the additional costs involved in processing late renewals.</p> <p>In general, the department processes all late renewal fees based on the following schedule no matter the profession:</p> <p>If the renewal fee is:</p> <ul style="list-style-type: none"> • \$1 to \$50, the late renewal penalty is set at 100% of the renewal fee. • \$51 to \$100, the late renewal penalty is set at \$50. • \$101 or more, the late renewal penalty is set at 50% of the renewal fee, and no more than \$300.

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		<p>Since the consultant renewal fee is \$50, the late renewal penalty will fall in alignment with bullet one and cost an additional \$50.</p> <p><i>Was the rule changed as a result of these comments? No</i></p>
<p>Continuing education self study option</p> <p>WAC 246-72-100</p>	<p>Concerns that allowing a self-study option to accumulate two hours of continuing education (CE) could result in a reduction in the quality and standards of those CE hours.</p>	<p>There is precedence for independent learning in CE for several equivalently trained professions regulated by the department. For example, midwifery and massage therapy CE rules (WAC 246-834-475 and 246-830-475, respectively) allow up to five hours of independent study, compared to this proposal of two hours.</p> <p>Self-study allowances will provide consultants with flexibility and increased access for educational opportunities. However the majority of CE will still be provided by structured courses and trainings. The department monitors CE reporting which will include submissions for self-study education. If need arises, the department is open to readdressing the issue in future rulemaking.</p> <p><i>Was the rule changed as a result of these comments? No</i></p>
<p>WAC 246-72-100</p> <p>Continuing education</p>	<p>Specify the requirement that trainers teach consultants about DOH compliant product including DOH compliant product logos and their meanings.</p>	<p>Rulemaking is not required to achieve training for compliant product and product logo identification. This can be implemented administratively. The department is including such topics in its free two-hour department-led training.</p> <p>The department would like to keep the training requirements flexible in order to be ready and able to make changes and updates to the training content as the industry faces growth and change.</p> <p><i>Was the rule changed as a result of these comments? No</i></p>

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WAC 246-72-110 Training program requirements	Add additional, specific instruction requiring a consultant to discuss with the patient the patient's legal responsibilities if he or she makes contact with law enforcement in a circumstance related to their patient status; differences in plant allowances, public view and odor prohibitions, and provisions for accessing clones.	<p>The department has expanded the description in the proposed language specifying the 5 hour instruction to include topics such as cannabis home grown laws, purchase and possession limits, pesticides, and medical marijuana authorization practices.</p> <p>If additional clarification is determined to be beneficial in the future, the department is open to readdressing the issue in future rulemaking.</p> <p><i>Was the rule changed as a result of these comments?</i> No.</p>
WAC 246-72-110 Training program requirements	Establish a requirement to teach to consultants about pesticide testing requirements, and clarify the differences of pesticide requirements and labeling for recreational and compliant products.	<p>The proposed rule already addresses training requirements for pesticides, purchase and possession limits, compliant product testing standards, and labeling requirements under WAC 246-72-110.</p> <p>Additionally, the suggested language topics will be reviewed in the two hour department-led training course offered to medical marijuana consultants.</p> <p><i>Was the rule changed as a result of these comments?</i> Yes- The department agrees the language regarding quality assurance testing in WAC 246-72-110(1)(a)(i)(C) can be clarified by referencing both recreational and compliant product.</p>
WAC 246-72-110 Training program requirements	Add a "disability awareness" requirement to consultant training programs.	<p>The Department agrees that disability awareness is very important to employees and workers who interact with customers but feels it is better addressed through the business owner's policies for all staff as it relates to disabled customers in alignment with RCW 49.60 and the American Disabilities Act.</p> <p><i>Was the rule changed as a result of these comments?</i> No</p>
WAC 246-72-110 Training program requirements	Allow individuals with a teaching degree and 4 years experience in the medical marijuana industry to instruct medical marijuana consultant training courses.	<p>The proposed rules will allow those with a teaching degree (or any other degree) to be eligible to become an instructor, as long as they have seven years' of experience in the regulated cannabis industry. The intent behind the seven year mandate is to ensure instructors are subject matter experts. This experience could be obtained through</p>

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		<p>volunteer work, training and education in the cannabis industry, or joining a professional cannabis centered organization.</p> <p>The department is open to readdressing the issue in future rulemaking if the length of time demonstrates a barrier to finding qualified instructors.</p> <p><i>Was the rule changed as a result of these comments?</i> No</p>
<p>MMJC training programs WAC 246-72-110</p>	<p>Testing for applicants to receive the initial consultant certification should be pass/fail. This is needed because schools are more reluctant to fail patients because it's bad for business.</p>	<p>WAC 246-72-110(1)(b) sets a pass/fail standard at 70 percent correct.</p> <p><i>Was the rule changed as a result of these comments?</i> No</p>
<p>WAC 246-72-110 Training program requirements</p>	<p>Concerned that lowering the professional requirements for the MMJ trainers might result in training programs no longer hiring doctors and lawyers, instead opting for cheaper options for education, which would be a disservice to training programs.</p>	<p>Individuals identified as potential trainers will still be screened through the department. The proposed rules allow for individuals with bachelor degrees in other professions to be eligible, with an added requirement of 7 years industry experience. This will expand opportunity for others with a degree to become a trainer while still mandating they demonstrate subject matter expertise.</p> <p><i>Was the rule changed as a result of these comments?</i> No</p>
<p>WAC 246-72-030(2)(e) Practice parameters</p>	<p>Language regarding open marijuana products or marijuana consumption could be repealed in department rules because it is redundant to language in chapter 314-55 WAC.</p>	<p>These rules apply specifically to a consultants certification and the causes for removing that certification by the department. Authority to regulate certification lies within the department and must be reflected in its rule.</p> <p><i>Was the rule changed as a result of these comments?</i> No.</p>

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WAC 246-72-030 (4) (d) Practice parameters	Consultants should be allowed to do freelance work if they hold a valid business license and a medical marijuana consultant certificate.	The requirement that consultants be employed by a medically endorsed retail store is written into RCW 69.51A.290 (5) and cannot be changed by rulemaking. <i>Was the rule changed as a result of these comments? No</i>
WAC 246-72-030 Practice parameters	The department should not allow medical marijuana consultants to volunteer at retail stores.	The ability for consultants to volunteer at retail stores is written into RCW 69.51A.290 (5) <i>Was the rule changed as a result of these comments? No.</i>
WAC 246-72-080 Renewals and updating license information	The department should allow for email renewals so consultants may renew their certificate online.	Medical marijuana consultants are able to renew their credential online already (provided it has not expired) and update their contact information online. <i>Was the rule changed as a result of these comments? No</i>