PROPOSED RULE MAKING

CR-102 (June 2012)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

Agency: Department of Health

☒ **Preproposal Statement of Inquiry was filed as WSR** 15-17-058 **; or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR _ ; or**
☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).**

☒ **Original Notice**
☐ **Supplemental Notice to WSR**
☐ **Continuance of WSR**

Title of rule and other identifying information: (Describe Subject)
Chapter 246-72 WAC - Medical Marijuana Consultant Certificate. Proposing a new chapter establishing rules for a medical marijuana consultant certificate.

Hearing location(s): Capital Event Center
Education Service District 13
6005 Tyee Drive SW
Tumwater, WA 98512

Date: 1/26/16 Time: 2:00 pm

Submit written comments to:
Name: Cathie Tedrick
Address: Washington State Department of Health
PO Box 47852
Olympia, WA 98504-7852
e-mail: http://www3.doh.wa.gov/policyreview/
fax 360-236-2901 by (date) 01/26/2016

Assistance for persons with disabilities: Contact
Cathie Tedrick by 01/19/2016
TTY (800) 833-6388 or () 711

Date of intended adoption: 02/09/2016
(Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
The purpose is to create new rules to establish a certificate for medical marijuana consultants as established by RCW 69.51A.290. The proposal is intended to create standards for people that can work in medically endorsed medical marijuana retail stores to provide assistance to patients with selecting products to best meet their needs. Authority is also given to the department to establish fees, training, renewals, and other requirements for this certification.

Reasons supporting proposal:
RCW 69.51A.290 established a medical marijuana consultant certificate and authorized the department to adopt rules setting application, training, continuing education, fees and other standards for certificate applicants and holders. The legislature also authorized the department to adopt rules prescribing information that certificate holders may give to patients seeking medical marijuana products.

Statutory authority for adoption:
RCW 69.51A.290

Statute being implemented:
RCW 69.51A.290

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

DATE 12/17/2015

NAME (type or print)
John Wiesman, DrPH, MPH

SIGNATURE

John Wiesman
, DrPH, MPH

TITLE
Secretary of Health

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 21, 2015
TIME: 11:49 AM

WSR 16-01-149

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Department of Health

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Chris Baumgartner	111 Israel Rd SE Tumwater, WA 98501	360-236-4819
Implementation....	Chris Baumgartner	111 Israel Rd SE Tumwater, WA 98501	360-236-4819
Enforcement.....	Dave Magby	111 Israel Rd SE Tumwater, WA 98501	360-236-4660

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:
Name:
Address:

phone
fax
e-mail

☒ No. Explain why no statement was prepared.
A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

Is a cost-benefit analysis required under RCW 34.05.328?

☒ Yes A preliminary cost-benefit analysis may be obtained by contacting:
Name: Cathie Tedrick
Address: PO Box 47852
Olympia WA, 98504-7852

phone 360-236-4819
fax 360-236-2901
e-mail medicalmarijuana@doh.wa.gov

☐ No: Please explain: The agency did not complete a cost benefit analysis under RCW 34.05.328. RCW 34.05.328(5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

Chapter 246-72 WAC
MEDICAL MARIJUANA CONSULTANT CERTIFICATE

NEW SECTION

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.

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

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

NEW SECTION

WAC 246-72-020 Certificate requirements. An applicant for a medical marijuana consultant certificate must submit to the department:

(1) An initial application on forms provided by the department;

(2) Fees required under WAC 246-72-110;

(3) Proof of successful completion of an approved training program;

(4) Proof of being age twenty-one or older. Acceptable forms of proof are a copy of the applicant's valid driver's license or other government-issued identification card, United States passport, or certified birth certificate;

(5) Proof of current CPR certification; and

(6) Any other documentation required by the secretary.

NEW SECTION

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) Assist a customer with the selection of marijuana products and other items sold at the retail outlet that may benefit the customer's medical condition;

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

(c) Describe 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 about the safe handling and storage of marijuana products, including strategies to reduce access by minors; and

(e) Provide 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; or

(iii) Consume or allow a customer to consume a marijuana product on the premises.

(3) When discussing a marijuana product with a customer, 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; or

(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.

NEW SECTION

WAC 246-72-040 Display of certificate. (1) A certificate holder shall conspicuously display his or her certificate in his or her principal place of business.

(2) A certificate holder who owns, is employed by, or volunteers at more than one business location shall conspicuously display a duplicate certificate or an unaltered photocopy of his or her certificate in each business location.

NEW SECTION

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 possession or control within twenty-one calendar days of service of a request by the secretary. If the twenty-one calendar day limit results in a hardship upon the applicant or credential holder, he or she may request, for good cause, an extension not to exceed thirty 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.

NEW SECTION

WAC 246-72-060 Denial, suspension, and revocation of certificate. The secretary has the power to deny, suspend, or revoke a certificate upon proof that:

(1) The certificate was procured through fraud, misrepresentation, or deceit.

(2) The applicant or certificate holder has violated or has permitted any employee or volunteer to violate any of the laws or rules of this state relating to drugs or controlled substances or has been convicted of a felony.

(3) The applicant or certificate holder has violated or has permitted any employee or volunteer to violate any part of chapter 69.50, 69.51A RCW, 314-55 WAC, or this chapter.

NEW SECTION

WAC 246-72-070 Denial, suspension, and revocation of certificate—Procedure. (1) The secretary will give written notice of the secretary's denial, suspension, or revocation of a certificate in accordance with RCW 43.70.115, chapters 34.05 RCW and 246-10 WAC.

(2) In any case of denial, suspension, or revocation of a certificate under the provisions of this chapter, the applicant or certificate holder has the right to an adjudicative proceeding and may file a request for an adjudicative proceeding consistent with chapter 246-10 WAC.

(3) 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 days of the applicant's or certificate holder's receipt of the adverse notice. If a request for adjudicative proceeding is not received by the department within twenty-eight days of the date of the applicant's or certificate holder's receipt of the adverse notice, the secretary's decision is final.

NEW SECTION

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 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.

(c) Renewal fees are accepted by the department no sooner than ninety 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 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 current address on file with the department. Requests for address changes may be made either by telephone or in writing. The mailing address on file with the department will be used for mailing of all official matters to the certificate holder.

NEW SECTION

WAC 246-72-090 Expired certificate. (1) A certificate holder may not practice at any time while his or her 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) Provide proof of successful completion of required continuing education under WAC 246-72-100;

(e) Provide proof of current CPR certification; and

(f) 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 a new application form;

(b) Pay the current application fee;

(c) Retake and provide proof of successful completion of an approved training program within the prior six months;

(d) Provide proof of current CPR certification; and

(e) Provide any other documentation required by the secretary.

NEW SECTION

WAC 246-72-100 Continuing education. (1) Certificate holders must complete a minimum of ten hours of continuing education each year in order to renew the certificate.

(2) 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. Distance learning includes correspondence courses, webinars, audio/video broadcasting, audio/video teleconferencing e-learning, or web casts. Acceptable topics are:

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

(b) Science-based information about marijuana;

(c) Addiction and substance abuse;

(d) Communication skills;

(e) Professional ethics and values.

(3) Continuing education topics may not include:

(a) Business and management courses;

(b) Health care training unrelated to marijuana; or

(c) Any topic unrelated to the practice parameters of a medical marijuana consultant.

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

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

(a) Transcripts;

(b) Certificate of completion; or

(c) Other formal documentation which includes:

(i) Participant's name;

(ii) Course title;

(iii) Course content;

(iv) Date(s) of course;

(v) Provider's name(s); and

(vi) Signature of the program sponsor or course instructor. Distance learning courses are exempt from the signature requirement.

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

(7) Up to twenty-five percent of certificate holders are randomly audited for continuing education compliance after the credential is renewed. It is the certificate holder's responsibility to submit docu-

mentation 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 days may result in suspension or revocation of the certificate.

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

NEW SECTION

WAC 246-72-110 Training program requirements. (1) Training programs must include:

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

(i) Five hours about Washington state laws and rules relating to marijuana;

(ii) Two hours about qualifying conditions and the common symptoms of each;

(iii) Two hours about the short- and long-term positive and negative effects of cannabinoids;

(iv) Two hours about products that may benefit qualifying patients based on the patient's condition and any potential contraindications;

(v) Two hours about the risks and benefits of various routes of administration;

(vi) Two hours about safe handling of marijuana products, including strategies to reduce access by minors;

(vii) Two hours about customer privacy and rights;

(viii) Two hours about the risks and warning signs of overuse, abuse and addiction; and

(ix) One hour about ethics.

(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 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:

(a) An active license to practice as a health care professional as defined in RCW 69.51A.010(2);

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

(c) A bachelor's degree or higher from an accredited college or university in agriculture, botany, or horticulture.

NEW SECTION

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 a form 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 to:

(a) 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; and

(h) Policies and procedures for maintaining training and testing records.

(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 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, within thirty days of such changes.

(9) The secretary may inspect 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 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 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.

NEW SECTION

WAC 246-72-130 Renewal of training program. Training programs approved under this chapter must:

(1) Participate in the renewal process established by the department every two years. Failure to renew will result in automatic withdrawal of approval of the program; and

(2) Comply with any changes to this chapter or training standards and guidelines in order to maintain an approved status.

NEW SECTION

WAC 246-72-140 Closure of an approved training program. When a training program approved under this chapter closes, it shall notify the department in writing, stating the reason and the date of intended closing.

NEW SECTION

WAC 246-72-990 Certificate fees. (1) The following nonrefundable fees will be charged for certificates:

Title of Fee	Fee
Application for certificate	$95.00
Renewal of certificate	$90.00
Late renewal penalty	$50.00
Expired certificate reissuance	$50.00
Duplicate certificate	$10.00
Verification of credential	$15.00

(2) Refund of fees: Fees submitted with applications for initial certificates, renewal, and other fees are nonrefundable.