

Small Business Economic Impact Statement
Chapter 246-71 WAC (New)
A Rule Concerning Medical Marijuana Authorization Database
December 7, 2015

Describe the proposed rule, including: a brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

The Washington State Department of Health is proposing a chapter of rules that would:

- Establish the requirements for the department to contract with an entity to create, administer and maintain a medical marijuana authorization database; and
- Establish a process to obtain recognition cards for patients and designated providers who are authorized to use medical marijuana.

The proposed rule is one element of the department's overall implementation of Second Substitute Senate Bill 5052 (2SSB 5052) which aims to align the medical marijuana market into the recreational market.

On April 24, 2015, Gov. Inslee signed Second Substitute Senate Bill (2SSB) 5052 (chapter 70, Laws of 2015), the Cannabis Patient Protection Act. This act creates licensing and regulation of all marijuana producers, processors and retail stores under the oversight of the renamed Washington State Liquor and Cannabis Board (LCB). It also directs the Department of Health to complete tasks that include:

- Contracting with a third party to create and administer a medical marijuana authorization database, and authorizes rules relating to the operation of the database;
- Adopting rules regarding products sold to patients and their designated providers;
- Consulting with the LCB about requirements for a retail store to get a medical marijuana endorsement;
- Creating a medical marijuana consultant certification program, and developing and approving continuing education for healthcare practitioners who authorize the medical use of marijuana; and
- Completing three reports: Making recommendations to the legislature about establishing medical marijuana specialty clinics, Reporting costs of establishing the authorization database; and Examining the feasibility of changing marijuana's schedule I designation in the state Controlled Substances Act.

Section 21 of 2SSB 5052 (Chapter 70, Laws of 2015, Regular Session) requires the Department of Health to adopt rules to establish a medical marijuana authorization database. The proposed medical marijuana authorization database rules will establish the requirements for a third party vendor to create, administer and maintain the database. The purpose of the database is to provide a process for issuing recognition cards to patients and designated providers who are authorized to

use medical marijuana and allow access to various entities who need to verify a card's validity or perform other regulatory work.

Only a marijuana retailer licensed by the LCB and holding a LCB medical marijuana endorsement may obtain permission to access the department's authorization database and issue recognition cards. The probable compliance requirements that a business is likely to need in order to comply with the proposed rule are to follow the requirements of sections WAC 246-71-020; WAC 246-71-030.

The kinds of professional services that a business is likely to need in order to comply with the proposed rule are employing staff who have successfully completed a department approved medical marijuana consultant training program and hold a valid medical marijuana consultant certificate in accordance with chapter 246-72 WAC (proposed separately). Under proposed LCB rules, a retail marijuana store with a medical endorsement is required to have medical marijuana consultants on staff, to add qualifying patients and designated providers to the authorization database.

Background

The department requested stakeholders to provide feedback on the potential cost to implement the proposed changes through four public stakeholder meetings, written feedback and survey response. Stakeholders included current medical marijuana outlets, prospective operators of retail marijuana outlets, patients and patient advocates, and health care practitioners. Through stakeholder input the department's determination is that the collective cost of the rule changes are nominal, based on current and projected revenue data. More detailed cost estimates are included in the section below.

Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

Table A:

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 0.1% of Average Annual Payroll	Minor Cost Threshold = 0.03% of Average Annual Revenue
None available	Marijuana Retail Store with Medical Endorsement	188	Not available	\$88,965 ¹

¹ Based on average daily current revenue of \$9,885 for medical marijuana-only outlets operating under Initiative 502, multiplied by 300 operating days per year (six days per week), or about \$3, 094,000 per year. This does not count prospective sales to recreational marijuana.

Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

The table below identifies sections of the rule that based on the analysis will not result in compliance costs.

Table: Rule Sections that will not likely result in cost:

#	WAC Section	Section Title
1	WAC 246-71-010	Definitions
2	WAC 246-71-060	Database access by qualifying patients or designated providers
3	WAC 246-71-070	Database access by prescribers and dispensers
4	WAC 246-71-080	Database access by local, state, tribal, and federal law enforcement and prosecutorial officials
5	WAC 246-71-090	Database access by the department of revenue
6	WAC 246-71-100	Confidentiality
7	WAC 246-71-110	Penalties and sanctions
8	WAC 246-71-150	Release of aggregate information from the database

The department analyzed the cost of compliance to the proposed rules in the following sections:

WAC 246-71-020 Adding qualifying patients and designated providers to the database, WAC 246-71-030 Renewing qualifying patients and designated providers in the database, WAC 246-70-120 Process to obtain a replacement recognition card, WAC 246-71-130 Removal of a qualifying patient or designated provider from the database, and WAC 246-71-140 Revocation of a designated provider.

Description of the proposed rules: The proposed rules establish the steps and requirements for the initial addition of someone into the database, the required renewals for cards, and the replacement of cards. The rules also list the required information that must be entered into the database for each patient and designated provider. The rules requires a medical marijuana consultant certificate holder to enter a qualifying patient’s or designated provider’s information into the authorization database. The rule requires consultants at a medical outlet to:

- Ensure that the authorization form provided is valid and meets all requirements specified in the statute and from the form’s instructions, and have been printed by the authorizing practitioner on approved tamper resistant paper.
- Verify the identity of every patient age 18 and older and every designated provider’s valid photographic identification. Except for patients under the age of 18, a person cannot be entered into the database without valid photographic identification.
- Check the database to ensure that a designated provider is not currently associated with a different patient in the database, before associating them with a new patient in the database. If a designated provider is still associated to a different patient, the

consultant cannot enter the designated provider into the database as associated with the new patient.

Stakeholder input determined the majority of medical outlets will employ more than one staff holding a medical marijuana consultant certificate, to meet the requirements for adding qualifying patients and designated providers to the database and creating recognition cards. Because these stores already are required by WA State Liquor and Cannabis Board rules to interface with their seed to sale system we are assuming they already have a computer(s) with internet access for the purpose of entering information into the database.

Probable costs to comply with the proposed rule, include the following:

- Average wage for medical marijuana consultant certified staff: \$22.00 an hour with benefits,
- Annual full time employee hours worked: 2,088 hours
- Labor: \$137,808 annually per medical outlet, based on three full time employees. Some of these may be existing employees who obtain a medical marijuana consultant certificate. But for the purposes of this analysis, the department assumes that consultants would be considered new employees.
- Recognition card creation: The estimated labor cost to enter information into the authorization database and create a recognition card is between \$5.40 and \$11.00 per card.
- Recognition card renewal: Estimated labor cost to produce a renewal recognition card is between \$3.60 and \$7.20 per card.
- Recognition card replacement: The estimated labor cost to produce a replacement recognition card is \$3.60 per card, plus minor costs for the card material and lamination.

Using the state of Colorado's medical marijuana registry and its population we estimate that we will have approximately 80,000 cards created per year. This is based on the assumption that since the card is optional for those 18 and over that approximately half of all patients who could receive a card will. We estimate a five percent new application rate or 4,000 after the new year and a ninety-five percent renewal rate or 76,000. So each year we estimate receiving \$80,000 in card fees. Projected staffing levels are indeterminate at this time, but stakeholders indicate there will be a need to increase staff at the majority of medical outlets in the first year of business to meet demands.

Current estimated sales revenue for retail outlets based on LCB data exceeds \$9,885.00 a day per outlet. Annual sales revenue for the 188 licensed retail stores from January, 2015 through November, 2015, has exceeded \$259,785,729.00. The average annual sales per retail store would be approximately \$1.5 million. Estimated one-time costs for complying with sections 020, 030, 120, 130, and 140 are approximately \$140,000. The department estimates about 600 retail marijuana outlets may eventually obtain a medical marijuana endorsement allowing them potentially have authorization database access. Survey responses from retail marijuana outlets indicated the number of employees per store ranges from 2 to 40, with the average being 9 employees. Compliance with the proposed rule is expected to increase sales and revenue for affected businesses.

WAC 246-71-040 Requirements for recognition cards

Description of the proposed rule: The proposed rule states the requirements for recognition cards. The rule identifies equipment requirements and establishes the steps and requirements for issuing recognition cards at medical outlets. The rule also states the requirements that must be met by the database vendor.

The rule does require businesses to have certain equipment available in order to create the recognition cards. This equipment includes:

- Cost of combined equipment: \$300.00 initial cost (printer, laminator, paper, supplies)
- Supplies: \$100.00 monthly

The database software application is supplied free of charge by the department to the medical outlets.

WAC 246-71-050 Database access by marijuana retailers with medical endorsements

Description of the proposed rule: The proposed rule establishes the process employees of medical outlets will use to confirm the validity of a recognition card presented by a patient or designated provider. This includes requirements for medical outlet employees to register with the department to receive credentials for access to the database.

The department estimates that 15 to 20 minutes will be required to register for access to the database. The time to verify the validity of recognition cards is estimated to be 10 minutes or less per card. Checking card validity will be part of the regular duties of designated employees, so the cost should be minimal.

WAC 246-71-990 Recognition card fees

Description of the proposed rule: The proposed rule establishes the process for medical outlets to collect and remit a one dollar fee for each initial, replacement, and renewal recognition card.

The department only anticipates minor costs of employee time involved to remit periodic payments. The one dollar fee is established in law.

Analyze whether compliance with the proposed rule will cause businesses to lose sales or revenue.

When surveyed, stakeholders indicated that the proposed rule will not cause businesses to lose sales or revenue, but would likely increase their client volume, which may increase sales and revenue compared to when a retailer is operating with no medical marijuana endorsement.

Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.

The department has calculated the minor cost threshold to be approximately \$88,965. Assumed costs to comply with the proposed rule include:

- \$140,000 related to ongoing compliance costs for having up to three certified staff enter patients or designated providers information into the database and storing it, and issuing renewal or replacement cards;
- \$300 in one time equipment costs;
- \$100 in monthly supply costs;
- Other minimal cost as noted in this analysis.

The department has determined that proposed rules will have more than minor costs on businesses in the industry.

Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

Based on our survey of currently licensed retail stores, the largest businesses employed approximately 40 staff. Of the 57 stores that responded to our survey the average number of staff were 9 per store.

While the proposed rule will impose costs on businesses, it is indeterminate whether or not there will be a disproportionate impact on small businesses. This is due to the fact that no store is currently able to sell medical products with their endorsement until July 1, 2016.

We could have limited the staffing costs imposed by allowing any employee to enter someone into the database, but concerns from patients about protecting their private health information we believe warranted restricting card creation to only staff trained and certified as a marijuana consultant. Current staff can become certified as consultants so stores do not necessarily have to hire new staff.

We did also attempt to ensure the rule only required the base minimum equipment necessary to produce the cards with the appropriate security features needed.

Describe how small businesses were involved in the development of the proposed rule.

The department conducted four stakeholder meetings, collecting input verbally and in writing on the proposed rule. Stakeholders included current medical marijuana outlets, prospective operators of retail marijuana outlets, patients and patient advocates, potential customers, health care practitioners, and other interested parties. Stakeholder input indicated the medical outlets supported the proposed rule language and the implementation of the authorization database.

Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

The estimated number of jobs that will be created as a result of compliance with the proposed rule is based on a survey of current retail outlets licensed by the WSLCB and reporting sales, and projections for the number of retail outlets that will become medically endorsed. The number of medical outlets is estimated to be 606 in the first year of business operation. If each outlet hired three department-certified medical marijuana consultants who would access the authorization database in order to cover all shifts, potentially 1,818 new jobs may be created by compliance with these rules. However, it is unknown how many existing retail employees may obtain a department certification, which would reduce the number of new jobs created. No jobs are anticipated to be lost as a result of compliance with the proposed rule.