



Washington State
Liquor and Cannabis Board

Date: October 25, 2023

To: David Postman, Board Chair
 Ollie Garrett, Board Member
 Jim Vollendroff, Board Member

From: Daniel Jacobs, Policy and Rules Coordinator

Copy: Will Lukela, Agency Director
 Toni Hood, Agency Deputy Director
 Chandra Wax, Director of Enforcement and Education
 Becky Smith, Licensing Director
 Justin Nordhorn, Policy and External Affairs Director
 Cassidy West, Policy & Rules Manager

Subject: **Approval to file a pre-proposal statement of inquiry (CR 101) regarding Medical Cannabis Endorsements.**

The Washington State Liquor and Cannabis Board (Board) is considering amending [WAC 314-55-020](#) and [WAC 314-55-080](#) and repealing, amending, and creating rule sections in Title 314 WAC or both as necessary to update requirements for cannabis retailers to maintain medical cannabis endorsements and to add a voluntary surrender mechanism.

Process

The Policy and Rules Coordinator requests approval to file the pre-proposal statement of inquiry (CR 101) for the rule making described above. A CR 101 Memorandum was presented at the Board meeting on October 25, 2023 and is attached to this order.

If approved for filing, the **tentative timeline** for the rule making process is outlined below:

October 25, 2023	Board is asked to approve filing pre-proposal statement of inquiry (CR 101). CR 101 is filed with the Office of the Code Reviser. Webpage is updated and notice circulated by GovDelivery distribution list. Informal comment period begins.
November 15, 2023	Notice is published in the Washington State Register under WSR 23-22.
December 9, 2023	Informal comment period ends.

January 31, 2024	Board is asked to approve filing proposed rules (CR 102). CR 102 is filed with the Office of the Code Reviser. Webpage is updated and notice circulated by the rules distribution list. Formal comment period begins.
February 21, 2024	Notice is published in the Washington State Register under WSR 24-04.
March 13, 2024	Public hearing is held and formal comment period ends.
March 27, 2024	Board is asked to adopt rules if no substantive changes are made (CR 103). Concise Explanatory Statement is provided to individuals offering written or oral comment at the public hearing or during the formal comment period, consistent with RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. Webpage is updated and notice circulated by GovDelivery distribution list.
April 27, 2024	Rules are effective 31 days after filing unless otherwise specified. See RCW 34.05.380(2).

_____ Approve	_____ Disapprove	_____	_____
		David Postman, Chair	Date
_____ Approve	_____ Disapprove	_____	_____
		Ollie Garrett, Board Member	Date
_____ Approve	_____ Disapprove	_____	_____
		Jim Vollendroff, Board Member	Date

Attachments: CR 101 Memorandum
March 29, 2023 Response to Petition for Rule-Making



CR 101 Memorandum Regarding Medical Cannabis Endorsements

Date: October 25, 2023
Presented by: Daniel Jacobs, Policy and Rules Coordinator

Background

On January 31, 2023, John Kingsbury submitted a petition for adoption, amendment, or repeal of a state administrative rule to the Washington State Liquor and Cannabis Board (Board). The petition requested that the Board amend [WAC 314-55-020](#) and [WAC 314-55-080](#) to create a mechanism to rescind medical cannabis endorsements for cannabis retailers that do not meet the regulatory requirements.

On March 29, 2023, the Board accepted the petition. Consistent with RCW 34.05.330(1)(b), the Board agreed to initiate the rulemaking process and begin collaboratively engaging with stakeholders and any interested members of the public to explore the possibility of amending the rules related to medical cannabis endorsements and update the language, as necessary, to create a voluntary surrender mechanism for medical cannabis endorsements.

Reasons Why Rulemaking Is Needed

Rulemaking is needed to amend WAC 314-55-020 and WAC 314-55-080 and potentially create new rule sections, amend, and repeal existing rule sections in Title 314 WAC or both to update requirements for cannabis retailers to maintain medical cannabis endorsements and create a voluntary surrender mechanism.

Process

The rulemaking process begins by announcing the Board's intent to consider changes to existing rules, add new rule sections, or both by filing a pre-proposal statement of inquiry (CR 101) form with the Office of the Code Reviser. This allows staff, stakeholders, industry partners, and all members of the authorizing environment to begin discussing possible rule changes.

At the CR 101 stage of the rulemaking process, no proposed language is offered. Any interested person may comment on this possible rulemaking during the designated comment period. Notice will be sent to all who have indicated that they want to receive notice of rule activity related to this pre-proposal statement

of inquiry. The notice will identify the public comment period and where comments can be sent.

PREPROPOSAL STATEMENT OF INQUIRY



CR-101 (October 2017) (Implements RCW 34.05.310) Do NOT use for expedited rule making

Agency: Washington State Liquor and Cannabis Board

Subject of possible rule making: Title 314 WAC. The Washington State Liquor and Cannabis Board (LCB) is considering amending WAC 314-55-020 and WAC 314-55-080 and repealing, amending, and creating rule sections in Title 314 WAC or both as necessary to update requirements for cannabis retailers to maintain medical cannabis endorsements, and to add a voluntary surrender mechanism.

Statutes authorizing the agency to adopt rules on this subject: RCW 69.50.342 (cannabis) and 69.50.375 (cannabis retailers – medical cannabis endorsements).

Reasons why rules on this subject may be needed and what they might accomplish: On March 29, 2023, the LCB accepted a rule petition related to removing medical cannabis endorsements for cannabis retailers not complying with the requirements and to create a framework for retailers to voluntarily surrender the endorsement. Consistent with RCW 34.05.330(1)(b), the LCB is initiating the rulemaking process to begin collaboratively engaging with stakeholders and any interested members of the public to explore the possibility of amending the language in WAC 314-55-020 and WAC 314-55-080, and repealing, amending, and creating new sections in Title 314 WAC or both as necessary to update the requirements for cannabis retailers to maintain a medical cannabis endorsement including, but not limited to, a voluntary surrender mechanism.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Collaborative rule making

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

	(If necessary)
Name: Daniel Jacobs, Policy and Rules Coordinator	Name:
Address: PO BOX 43080, Olympia, WA 98504	Address:
Phone: 360-480 1238	Phone:
Fax: 360-704-5027	Fax:
TTY:	TTY:
Email: rules@lcb.wa.gov	Email:
Web site: lcb.wa.gov	Web site:
Other:	Other:

Additional comments: Interested persons can participate in the rule process through open public meetings and by submitting written comments, and are encouraged to sign up for the interested parties list (GovDelivery) at <https://public.govdelivery.com/accounts/WALCB/subscriber/new>. Rulemaking notices and stakeholder engagement opportunities will be emailed via GovDelivery and posted to the LCB website at lcb.wa.gov.

Date: October 25, 2023	Signature: Place signature here
Name: David Postman	
Title: Chair	



Notice of Pre-Proposal Statement of Inquiry **WSR 23-22-XXX**

The Washington State Liquor and Cannabis Board (LCB) has filed a pre-proposal statement of inquiry (CR 101) to consider amending [WAC 314-55-020](#) and [WAC 314-55-080](#), and repealing, amending, and creating rule sections in Title 314 WAC or both as necessary to update requirements for cannabis retailers to maintain medical cannabis endorsements, and to create a voluntary surrender mechanism.

The LCB encourages your input about this rulemaking. Following the CR 101 comment period, the agency will distribute and publish a CR 102 with proposed rules, establish a formal comment period consistent with chapter 34.05 RCW on the proposed rules, and hold a public hearing before the final rules are adopted.

Public Comment

Please send your comments on the CR 101 to the WSLCB through mail, e-mail, or fax by **December 9, 2023**. The CR 102 with proposed rules is anticipated to be filed on or after January 31, 2024, following collaborative rule development.

By mail:	Rules Coordinator	By e-mail:	By fax:
	Liquor and Cannabis Board	rules@lcb.wa.gov	360-704-5027
	P.O. Box 43080		
	Olympia, WA 98504-3080		

This notice can be found at <https://lcb.wa.gov/laws/current-rulemaking-activity>.



Washington State Liquor and Cannabis Board

Topic: Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – (WAC 314-55-080 related to medical cannabis endorsements)

Date: March 29, 2023

Presented by: Daniel Jacobs, Policy and Rules Coordinator

Background

On January 31, 2023, John Kingsbury submitted a petition for adoption, amendment, or repeal of a state administrative rule. The petition requests that the agency amend WAC 314-55-080, and as needed, WAC 314-55-020, to create a mechanism to discontinue medical endorsements from cannabis retailers who no longer comply with the laws and regulations.

In the rule petition, Mr. Kingsbury stated:

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: 314-55-020, 314-55-080

I am requesting the following change: Currently, the following rules seem to offer no clear path for LCB to revoke a medical endorsement in the absence of voluntary and affirmative action by the licensee.

This change is needed because: There are too many licensees holding medical endorsements they are not meeting the requirements for, and actually removing those endorsements is unduly burdensome.

The effect of this rule change will be: To save everyone a lot of work. To make adherence to the standard more clear.

The rule is not clearly or simply stated:

In the email containing the rule petition, Mr. Kingsbury further stated:

There seems to be no clear, specific path for LCB to remove a retail medical endorsement, absent a specific request and follow-up actions by the retailer. As you can imagine, this creates some barriers to legitimate removal, and demands an excess of labor and confusion when an endorsement should clearly be removed and licensee is simply not taking the affirmative actions to remove it.

The petition is offered to provide clarity and reduce agency (and my) work.

Issue

Whether the Board should initiate the rulemaking process to consider amending WAC 314-55-080 to create a mechanism for cancellation of medical cannabis endorsements for retailers who no longer qualify for the endorsement.

Authority

Laws

[RCW 69.50.342\(2\)](#) provides that rules adopted on retail outlets holding medical cannabis endorsements must be adopted in coordination and consultation with the Washington State Department of Health.

[RCW 69.50.375\(1\)](#) establishes a medical cannabis endorsement to a cannabis retail license to permit a cannabis retailer to sell cannabis for medical use to qualifying patients and designated providers. The endorsement also permits such retailers to provide cannabis at no charge, at their discretion, to qualifying patients and designated providers.

[RCW 69.50.375\(3\)](#) provides that, to be issued an endorsement, a cannabis retailer must:

- (a) Not authorize the medical use of cannabis for qualifying patients at the retail outlet or permit health care professionals to authorize the medical use of cannabis for qualifying patients at the retail outlet;
- (b) Carry cannabis concentrates and cannabis-infused products identified by the Department of Health under subsection (4) of this section;
- (c) Not use labels or market cannabis concentrates, useable cannabis, or cannabis-infused products in a way that makes them intentionally attractive to minors;
- (d) Demonstrate the ability to enter qualifying patients and designated providers in the medical cannabis authorization database established in [RCW 69.51A.230](#) and issue recognition cards and agree to enter qualifying patients and designated providers into the database and issue recognition cards in compliance with Department of Health standards;
- (e) Keep copies of the qualifying patient's or designated provider's recognition card, or keep equivalent records as required by rule of the board or the department of revenue to document the validity of tax exempt sales; and
- (f) Meet other requirements as adopted by rule of the department or board.

[RCW 69.50.375\(4\)](#) provides that the Department, in conjunction with the Board, must adopt rules on requirements for cannabis concentrates, useable cannabis, and cannabis-infused products that may be sold, or provided at no charge, to qualifying patients or designated providers at a retail outlet holding a medical cannabis endorsement.

Rules

[WAC 314-55-020\(6\)](#) provides that the Board may place licensing change applications made by a licensee on hold if the change application is reasonably related to an ongoing investigation.

[WAC 314-55-020\(6\)\(a\)](#) provides that the board may withdraw licensing change applications pending the results of an adjudicative proceeding regarding a violation of this chapter. Depending on the outcome of the adjudicative proceeding, the licensee may reapply for the withdrawn licensing change application(s).

[WAC 314-55-020\(6\)\(b\)\(ii\)](#) identifies the addition of a medical cannabis endorsement as the type of licensing subject to the requirements of subsection 6.

[WAC 314-55-080\(3\)](#) identifies several requirements for maintaining a medical cannabis endorsement in good standing, including:

- (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;
- (c) Prohibit the medical use of cannabis by anyone at the retail outlet at all times, including medical use by qualifying patients;
- (d) Maintain at all times, a representative assortment of cannabis products necessary to meet the needs of qualified patients and designated providers;
- (e) Not market cannabis concentrates, useable cannabis, or cannabis-infused products in a way that make them especially attractive to minors;
- (f) Demonstrate the ability to enter qualifying patients and designated providers in the medical cannabis authorization database established by the department of health;
- (g) Issue recognition cards and agree to enter qualifying patients and designated providers into the database in compliance with the department of health standards;
- (h) 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) 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.

[WAC 314-55-080\(6\)](#) states that failure to comply with subsection (3) [the requirements above] may result in suspension or revocation of the medical cannabis endorsement.

Analysis

The Board has statutory authority under RCW 69.50.342 to create rules regarding cannabis retailers holding a medical cannabis endorsement. Endorsements are additions to licenses that change the circumstances under which regulated substances may be sold. While there are many endorsements of different kinds for liquor licenses, the medical cannabis endorsement is the only endorsement available to cannabis licensees.

WAC 314-55-020(6) provides a framework for licensees to apply for various changes to their existing license, including adding a medical cannabis endorsement. Currently, to maintain a medical cannabis endorsement, a cannabis retailer must comply with a variety of requirements described in RCW 69.50.375 and WAC 314-55-080. However, there is no mechanism specifically identified in rule or statute for a cannabis retailer to voluntarily cancel or surrender their medical cannabis endorsement. WAC 314-55-080(6) provides that failure to comply with the requirements of WAC 314-55-080(3) may result in suspension or revocation of the medical cannabis endorsement.

The Board's Cannabis Retail map currently marks retailers that have a medical cannabis endorsement with a green icon. Additionally, in the Frequently Requested Lists section of the Board's website, there is a list of retailers with medical endorsements that is available to review as an Excel sheet. This list is updated every Tuesday. To date, 235 licensed cannabis retailers have active medical cannabis endorsements.

Since October 2022, Mr. Kingsbury has contacted LCB's Enforcement and Education division expressing concern that several cannabis retailers with medical endorsements no longer met the requirements to maintain the endorsement. He offers that consideration of such a rule change may better achieve overarching goals of increased access to medically compliant product and consultative services by providing a more accurate representation of which cannabis retailers meet the requirements of the endorsement.

In subsequent communication, Mr. Kingsbury suggested verifying that cannabis retailers meet requirements prior to issuance of a medical endorsement. A current cannabis retailer can submit an Application for Added Medical Cannabis Endorsement with form LIQ 1276.

Divisional, Interagency, Intergovernmental, DEIB, Social Equity and Other Impacts

Divisional

Licensing

In October 2022, Licensing contacted 289 cannabis medical endorsement holders to confirm they were still maintaining compliance to have the endorsement and if they were still interested in keeping the endorsement on their license. The following questions were asked:

1. Do you have the ability to enter qualifying patients and designated providers in the medical cannabis database administered by the Department of Health (DOH) under chapter [246-71 WAC](#)?
2. Do you have the ability to issue medical cannabis patient and designated provider recognition cards developed by the DOH under chapter 246-71 WAC?
3. Do you have at least one employee who holds an active medical cannabis consultant certificate under chapter 246-72 WAC?
4. Do you currently carry cannabis products that have been identified by the DOH in chapter [246-70 WAC](#) as beneficial for medical use?
5. Are you interested in keeping the medical endorsement?
 - a. **If no:** To remove the medical endorsement, they can email cannabisendorsements@lcb.wa.gov requesting to remove it. They should include the license number and the location address and the request must come from a member on the license. Once received, a Customer Service Representative will assist with removing the endorsement.
 - b. **If yes and it appears they are not compliant:** What is your plan to become compliant?

As a result, 51 medical endorsements were discontinued and removed from the cannabis retail license.

In 2017, Licensing conducted a similar review of medical cannabis endorsements. At that time, 196 medical cannabis endorsements were discontinued and removed from the cannabis retail license.

As outlined above, WAC 314-55-080 outlines certain requirements to maintain a medical cannabis endorsement. The Licensing Division requires an application and copy of a Cannabis Consultant Certification prior to adding a medical cannabis endorsement to a license.

The current rule language does not specify a time period for a retailer to become compliant and does not provide specific measurements for maintaining compliance. For example, it is common for retailers to have staff changes, which may result to a lapse in time having a consultant on staff. Additionally, WAC 314-55-080 (3)(d) states the endorsement holder must “maintain at all times, a representative assortment of cannabis products necessary to meet the needs of qualified patients and designated providers”, which does not define the amount of products that must be available or take into consideration the availability of cannabis medical products.

Enforcement & Education – no specific concerns identified.

Finance – no specific concerns identified.

Information Technology/Infrastructure – no specific concerns identified.

Public Health/Prevention - no specific concerns identified.

Interagency

Department of Health

The Department of Health’s medical cannabis program is responsible for administration of the medical cannabis database, certifying medical cannabis consultants, and standards for medically compliant products. The Department of Health also maintains a [list](#) of medical cannabis endorsed stores. The list on the Department of Health’s website is connected to LCB’s list such that when one is updated, the other is automatically updated.

Labor & Industries – no specific concerns identified.

Intergovernmental

Tribes – no specific concerns identified.

DEIB, Social Equity

As this rule petition relates to medical cannabis endorsements, medical cannabis patients will likely be most impacted by the rule revisions contemplated by this petition. However, the total population of medical cannabis patients in Washington is unclear based on the frequent assertion that there are a number of consumers who identify as medical cannabis patients but do not register in the DOH database. Providing accurate and publicly available information on medically endorsed stores may positively impact these populations by increasing access to medically compliant products and consultative services. Such efforts may also assist in emphasizing health equity, rather than disparity, for those who rely on compliant product for treatment of medical conditions.

Options

Option 1: Deny the petition and do nothing. Maintains status quo.

- Risk: Complaints will continue, requiring additional Enforcement & Education staff hours. Retailers that no longer qualify for the medical cannabis endorsement may benefit by continuing to be identified as holding a valid medical cannabis endorsement.
- Benefit: No identifiable benefits.

Option 2: Deny the petition and provide a public-facing message or guidance document to cannabis retailers regarding requirements described in rule for maintaining a medical cannabis endorsement. Such a message or guidance may provide contact information to relevant LCB staff and directions for how to cancel their medical cannabis endorsement if they no longer qualify.

- Risk: As with Option 1, complaints may continue. With any public facing messaging, risk of misinterpretation by readers.
- Benefit: Guidance may be more expeditious way to address concerns than rule-making but may not fully achieve satisfactory outcomes that fully address Petitioner’s concerns. May encourage non-compliant retailers to come into compliance to maintain the medical cannabis endorsement.

Option 3: Accept the petition, agree to initiate the rulemaking process regarding amending WAC 314-55-080 to create a mechanism for voluntary termination of medical cannabis endorsements.

- Risk: Retailers that do not currently qualify for the medical cannabis endorsement may retain endorsement during the rule development process.
- Benefit: May encourage non-compliant retailers to come into compliance to maintain the medical cannabis endorsement. Allows for collaborative stakeholder involvement and possible additional clarity in rule language.

Board Action

After considering the various options identified by Director’s Office staff, the Board accepts/denies the petition for rulemaking received from John Kingsbury on January 31, 2023.

Accept Deny 
David Postman, Chair 3.29.2023
Date

Accept Deny *Not Present*
Ollie Garrett, Board Member 3.29.2023
Date

Accept Deny 
Jim Vollendroff, Board Member 3.29.2023
Date

Attachments

1. Email from John Kingsbury received January 31, 2023, containing rule petition.
2. Supplemental Email from John Kingsbury received February 18, 2023.