



COLORADO

Department of
Regulatory Agencies

Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis declared a state of emergency on March 10, 2020, through Executive Order 2020 003, which was subsequently extended through Executive Orders 2020 018 and 2020 032, to meet the challenges of the COVID-19 pandemic by mitigating the harm caused by the spread of the disease. Executive Order 2020 038 was issued on April 15, 2020, to address the immediate need for trained medical personnel available to provide healthcare services during the COVID-19 pandemic.

Basis

Through Executive Order 2020 038, the governor temporarily suspended the State Board of Nursing' rulemaking authorities set forth in section 24-1-122(3)(gg), C.R.S., and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order 2020-038 issued by Governor Jared Polis pursuant to the State of Emergency Declaration found in Executive Orders 2020-003, 2020-027 and 2020 032, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order 2020-038 directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Due to the COVID-19 pandemic, nurse and nurse aid educational programs are unable to secure clinical education placements for its students to complete the requisite education in clinical settings, leaving nursing and nurse aide students unable to progress through their education, including graduation, leaving thousands of trained nursing personnel unable to enter the workforce.

In addition, the COVID-19 pandemic has resulted in the indefinite postponement of examinations required for licensure across the United States, including Colorado, Even as the testing centers re-open, the number of seats available for each scheduled examination have been drastically reduced in order to comply with Social Distancing requirements, leaving thousands of otherwise qualified nursing and nurse aide graduates unable to enter the workforce.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is extending the suspension of State Board of Nursing Rules related to nurse and nurse aide education and nurse aide examinations, as set forth in Executive Order 2020 038; and granting temporary licensure for nurse and nurse aide graduates who are eligible for licensure but for successful completion of the requisite examination, in order to expand the available healthcare workforce.

Justification

As set forth in Executive Order 2020 038, the need exists to immediately expand the available healthcare workforce. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules governing nurse and nurse aide education and temporary licensure to enable nursing and nurse aides to progress through their education and to obtain temporary licensure prior to successful completion of the requisite examinations.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4), C.R.S., which requires the agency to hold a public hearing “at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally”; and with less than the twenty days’ notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that “[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest.” Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order 2020-038 and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce is imperatively necessary for the preservation of the public health, safety and welfare.


The Executive Director of the Department of Regulatory Agencies, through the Division Director, also finds that given the requirements of Executive Order 2020 038 and the immediate risk to the health, safety and welfare of Colorado patients, this continued suspension of nursing and nurse aide educational requirements and the granting of temporary licensure pending successful completion of the requisite examinations cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need

for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect May 1, 2020, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/ emergency rules.

Dated this 1st day of May, 2020.

A handwritten signature in cursive script, appearing to read "Ronne Hines", written in black ink.

Ronne Hines, Director
Division of Professions and Occupations