



COLORADO

**Department of
Regulatory Agencies**

Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis (“Governor”) declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State’s efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043, D 2022 044, D 2022 045, and D 2023 001, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043, D 2022 044, D 2022 045, and D 2023 001, the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1-122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), 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 D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043, D 2022 044, D 2022 045, and D 2023 001, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, 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 D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043, D 2022 044, D 2022 045, and D 2023 001, and 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.

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 promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043, D 2022 044, D 2022 045, and D 2023 001, the need exists to immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

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 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 D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043, D 2022 044, D 2022 045, and D 2023 001, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and 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 January 9, 2023, 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.

Adopted this 9th day of January, 2023.

A handwritten signature in blue ink, appearing to read 'K. McGovern', with a stylized flourish at the end.

Karen McGovern, Interim Division Director of the
Division of Professions and Occupations