



COLORADO

Department of
Regulatory Agencies

Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

On July 6, 2022, Colorado Governor Jared Polis (“Governor”) signed Executive Order D 2022 032, “Directing State Agencies to Protecting Access to Reproductive Health Care in Colorado.”

On July 14, 2022, Colorado Governor Jared Polis (“Governor”) signed Executive Order D 2022 034, “Protecting Colorado’s Workforce and Expanding Licensing Opportunities.”

On August 10, 2022, HB22-1263 (Concerning the Continuation of Licensing Requirements for Acupuncturists) became effective.

Basis

The basis for these rules is Executive Order D 2022 032, Executive Order D 2022 034, and HB22-1263.

Through Executive Order D 2022 032, Governor Jared Polis directed all state agencies not to share any information or data, including patient medical records, patient-level data or related billing information, or expend time, money, facilities property, equipment, personnel, or other resources to assist or further any investigation or proceeding initiated in or by another state that seeks to impose criminal or civil liability or professional sanction upon a person for conduct that would be legal in Colorado related to providing, assisting, seeking, or obtaining reproductive health care, unless pursuant to a court order.

Governor Jared Polis also directed the Department of Regulatory Agencies (DORA) to work with all programs and boards of professional licensure operating under its purview to promulgate and issue necessary rules that will ensure that no person shall be subject to a disciplinary action against a professional license or disqualified from professional licensure for providing or assisting in the provision of reproductive health care or as a consequence of any civil or criminal judgment, discipline, or other sanction threatened or imposed under the laws of another state so long as the care as provided is consistent with professional conduct and standards of care within the State of Colorado.

Through Executive Order D 2022 034, Governor Jared Polis directed the Department of Regulatory Agencies to work with all programs and boards of professional licensure operating under its purview to promulgate and issue rules as necessary to ensure that no person shall be subject to disciplinary action against a professional license or disqualified from professional licensure for any civil or criminal judgment, discipline, or other sanction threatened or imposed under the laws of another state as long as the actions are lawful and consistent with professional conduct and standards of care within the State of Colorado.

Through HB22-1263, as passed by the Colorado State Legislature and signed by the Governor, continued the licensing requirements for acupuncturists and mandated other rulemaking.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2022 032, Executive Order D 2022 034, and HB22-1263.

As stated in Executive Order D 2022 032, Colorado is experiencing workforce shortage in many professions, and disqualifying people because they were prosecuted for taking actions in other states that are fully legal under Colorado law would hurt our economy and our State. Colorado is committed to protecting access to reproductive health care. No one who is lawfully providing, assisting, seeking, or obtaining reproductive health care in Colorado should be subject to legal liability or professional sanctions in Colorado or any other state, nor will Colorado cooperate with criminal or civil investigations for actions that are fully legal in Colorado.

As stated in Executive Order D 2022 034, employers are having difficulty recruiting and retaining qualified employees, many of whom need professional licenses. The exclusion of people from the workforce because of marijuana-related activities that are lawful in Colorado, but illegal in other states, hinders our economy and our State.

Through HB22-1263, the emergency rulemaking is necessary to timely implement this legislation.

Justification

As set forth in Executive Order D 2022 032, the need exists to immediately protect access to reproductive health care in Colorado by promulgating rules ensuring no licensee, certificant, or registrant shall be subject to disciplinary action against a professional license or disqualified from professional licensure for providing or assisting in the provision of reproductive health care or as a consequence of any civil or criminal judgment, discipline, or other sanction threatened or imposed under the laws of another state so long as the care provided is lawful and consistent with professional conduct and standards of care within the State of Colorado.

As set forth in Executive Order D 2022 034, the Order ensures that all Coloradans are afforded protections and rights under Colorado law.

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 Regulator, as defined in section 12-20-102(14), C.R.S., hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2022 032, to protect access to reproductive health care in Colorado. The adoption of

emergency rules 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 Regulator 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 August 15, 2022, and remain in effect for up to a maximum of 120 days after adoption of these temporary/emergency rules.

Adopted this 15th day of August, 2022.

A handwritten signature in blue ink, appearing to read 'K. McGovern', is written over a horizontal line.

Karen McGovern, Deputy Division Director of Legal Affairs,
for Ronne Hines, Director Division of Professions and Occupations