



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 D 2020 003, which was subsequently extended through Executive Orders D 2020 018 and D 2020 032, to meet the challenges of the COVID-19 pandemic by mitigating the harm caused by the spread of the disease. Executive Order D 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: The basis for these emergency rules is Executive Order D 2020 038 issued by Governor Jared Polis pursuant to the State of Emergency Declaration found in Executive Orders D 2020 003, D 2020 027, and D 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., and sections 12-20-204 and 12-280-107(1), C.R.S.

Purpose: The purpose of these emergency rules is to effectuate Executive Order D 2020 038, through the suspension and amendments of current State Board of Pharmacy rules that may pose regulatory barriers to providing much needed pharmacy services during the COVID-19 pandemic. The emergency rules also expand the workforce of trained medical personnel available to provide healthcare services.

Justification:

As set forth in Executive Order D 2020 038, the need exists to immediately expand the available healthcare workforce and reduce regulatory barriers. The State Board of Pharmacy is promulgating these emergency rules governing the performance of COVID-19 testing by pharmacists and temporarily suspending current State Board of Pharmacy rules that may present a barrier to providing pharmacy services during the COVID-19 pandemic.

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 State Board of Pharmacy hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2020 038 and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce and reduce regulatory barriers to providing healthcare is imperatively necessary for the preservation of the public health, safety and welfare.

The State Board of Pharmacy also finds that given the requirements of Executive Order D 2020 038 and the immediate risk to the health, safety and welfare of Colorado patients, this rulemaking cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The State Board of Pharmacy 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.