

Decision No. C21-0830

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0632T

IN THE MATTER OF TEMPORARY RULES REGARDING THE PROCESS TO
IMPLEMENT SENATE BILL 21-154 REGARDING THE CREATION OF A
STATEWIDE 9-8-8 SURCHARGE.

DECISION ADOPTING TEMPORARY RULES

Mailed Date: December 29, 2021
Adopted Date: December 29, 2021

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission adopts temporary rules to comply with the additions of or amendments to §§ 24-75-402, 27-64-101 to 103 and 40-17.5-101 to 40-17.5-105, C.R.S., pursuant to Senate Bill (SB) 21-154. The statute provides for the implementation of 9-8-8 as the number for crisis response services in Colorado, creates the 9-8-8 Crisis Hotline Enterprise (Enterprise), and provides for a 9-8-8 surcharge. Among its requirements, the statute mandates that the Commission, beginning January 1, 2022, collect the surcharge on behalf of the 9-8-8 Enterprise Board and assess penalties and late fees for 9-8-8 surcharges not timely remitted. In order to comply with these statutory requirements beginning on January 1, 2022, thereby protecting the public health, welfare, and safety by providing for the funding to access to suicide prevention and mental health support services, we find it imperatively necessary to adopt temporary rules.

2. The Commission has adopted permanent rules implementing SB 21-154 through Decision No. R21-0681, issued November 4, 2021 in Proceeding No. 21R-0394T. However, the

permanent rules are not expected to be effective until January 30, 2022, following publication by the Secretary of State. Because SB 21-154 requires the collection and remittance of 9-8-8 surcharges beginning on January 1, 2022, temporary rules are necessary to ensure rules are timely in place for the collection and administration of the 9-8-8 surcharge.

3. These temporary rules mirror the permanent rules adopted in Proceeding No. 21R-0394T. They set forth processes and procedures governing the collection and remittance of 9-8-8 surcharge funds and establish procedures for conducting audits of service providers' practices regarding the collection, payment, and remittance of 9-8-8 surcharges. These temporary rules are effective for 210 days from the effective date of this Decision, or until the Commission's permanent rules implementing SB 21-154 are effective. *See* § 40-2-108(2), C.R.S.

B. Discussion, Findings, and Conclusions

4. On October 17, 2020, the United States Congress passed the "National Suicide Hotline Designation Act of 2020," which designates 9-8-8 as the number for the National Suicide Prevention Lifeline to aid rapid access to suicide prevention and mental health support services. On June 28, 2021, Governor Jared Polis signed SB 21-154, which provides for the implementation of 9-8-8 as the number for crisis response services in Colorado, creates the 9-8-8 Enterprise, and provides for a 9-8-8 surcharge through the addition of §§ 27-64-101-105 and 40-17.5-101-105, C.R.S., and changes to § 24-75-402, C.R.S. In addition to numerous other requirements related to the establishment, funding, and administration of the Enterprise and the 9-8-8 Crisis Hotline, SB 21-154 directs the Commission to collect the 9-8-8 surcharge from service suppliers, and it directs the Commission to promulgate rules for such remittances and for audits of service suppliers relating to the collection and remittance of 9-8-8 surcharges.

5. To implement these requirements, the Commission opened Proceeding No. 21R-0394T and issued a Notice of Proposed Rulemaking on August 30, 2021.¹ Recommended Decision No. R21-0681 issued on November 4, 2021, adopting final permanent rules became the Decision of the Commission on November 24, 2021. The permanent rules are expected to be effective on January 30, 2022.

6. The statute's requirements relating to the collection, remittance, and audit of 9-8-8 surcharges commence on January 1, 2022, leaving a short period of time during which the permanent rules will not yet be effective and during which the 9-8-8 surcharge must be collected and remitted to the Commission. Through this proceeding, we adopt temporary rules to fill this gap.

7. The Commission may adopt a temporary rule without engaging in the processes required by the Administrative Procedure Act for a permanent rule "only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of [the section to complete a permanent rulemaking] would be contrary to the public interest and makes such a finding on the record." § 24-4-103(6)(a), C.R.S. For the reasons stated below, we find that immediate adoption of these temporary rules is imperatively necessary to comply with state law and to provide for the health, safety, and welfare of the public.

8. Section 27-64-101(b), C.R.S., states that "[i]t is imperative for Colorado to implement 988 as the three-digit number for crisis response services in Colorado in order to comply with federal regulations; improve quality and access to behavioral health crisis services,

¹ See Decision No. C21-0515.

especially for underserved populations and in rural areas of the statute; and reduce stigma surrounding suicide, mental health, and substance use conditions.”

9. The portions of SB 21-154 dealing with the collection and remittance of 9-8-8 surcharges require that service suppliers remit 9-8-8 surcharges to the Commission on a monthly basis, in a manner established by the Commission by rule. The surcharge collections remitted to the Commission are then credited to the 9-8-8 Crisis Hotline Cash Fund for the Enterprise’s use. Because the duty to collect 9-8-8 surcharges begins on January 1, 2022, awaiting the effective date of the permanent rules would leave the Commission and service suppliers without effective rules to govern collections and remittances of the 9-8-8 surcharge and audits of such collections and remittances. This would prevent the implementation of a funding mechanism intended to support mental health services and the health, safety, and welfare of the public, and to comply with federal regulations. The adoption of temporary rules allows the Commission to meet the deadlines imposed by statute and timely address the need for funds to support the activities of the Enterprise for the benefit of the people of Colorado.

10. We find that these matters require our immediate attention to comply with state law and to protect the health, safety, and welfare of the public, which will be served by the activities of Enterprise. We also find that waiting until the permanent rules adopted in Proceeding No. 21R-0394T will be effective would be contrary to the public interest because it would prevent fulfillment of SB 21-154’s deadlines and would risk the health, safety, and welfare of the public. Therefore, we immediately adopt temporary rules addressing processes and procedures governing the collection and remittance of 9-8-8 surcharges, and the audit of such remittances, which are imperatively necessary for compliance with state law and to preserve public health, safety, and welfare.

11. The temporary rules shall be effective on the mailed date of this Decision, and shall remain in effect until the permanent rules become effective or for 210 days, whichever period is less.

12. The temporary rules in legislative (strikeout and underline) format, Attachment A, and the temporary rules in final version format, Attachment B are available through the Commission's E-Filing system² at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0632T

II. ORDER

A. The Commission Orders That:

1. The rules in final format are available in this proceeding through the Commission's E-Filings system and are hereby adopted as temporary rules consistent with the above discussion.

2. The temporary rules shall be effective on the mailed date of this Decision.

3. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

4. This Decision is effective upon its Mailed Date.

² From the Electronic Filings (E-Filings) system page (<https://www.dora.state.co.us/pls/efi/EFI.homepage>), the rules can also be accessed by selecting "Search" and entering this proceeding number, 21R-0632T, in the "Proceeding Number" box and then selecting "Search."

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 29, 2021.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners