

1 Introduced by Committee on Health Care

2 Date:

3 Subject: Health; COVID-19; health care providers; regulatory flexibility

4 Statement of purpose of bill as introduced: This bill proposes to extend until  
5 March 31, 2024 certain provisions of previous acts allowing for health care-  
6 related regulatory flexibility during and after the COVID-19 pandemic. The  
7 bill would continue indefinitely the ability of authorized health care  
8 professionals to renew buprenorphine prescriptions without requiring an office  
9 visit, provided that doing so is allowed by federal law, and would require the  
10 Board of Medical Practice to report on ways to increase efficiency in  
11 Vermont’s physician licensure process. The bill would also allow advance  
12 directives to continue to be witnessed remotely and would permit them to be  
13 signed electronically.

14 An act relating to extending COVID-19 health care regulatory flexibility  
15 and allowing remote witnesses and electronic signatures for advance  
16 directives

17 It is hereby enacted by the General Assembly of the State of Vermont:

18 Sec. 1. 2020 Acts and Resolves No. 91, as amended by 2020 Acts and  
19 Resolves No. 140, Sec. 13, 2020 Acts and Resolves No. 159, Sec. 10, 2021  
20 Acts and Resolves No. 6, Secs. 1 and 3, 2021 Acts and Resolves No. 69, Sec.  
21 19, and 2022 Acts and Resolves No. 85, Sec. 1, is further amended to read:

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\* \* \* Compliance Flexibility \* \* \*

Sec. 4. HEALTH CARE AND HUMAN SERVICE PROVIDER  
REGULATION; WAIVER OR VARIANCE PERMITTED

Notwithstanding any provision of the Agency of Human Services’ administrative rules or standards to the contrary, through March 31, ~~2023~~ 2024, the Secretary of Human Services may waive or permit variances from the following State rules and standards governing providers of health care services and human services as necessary to prioritize and maximize direct patient care, support children and families who receive benefits and services through the Department for Children and Families, and allow for continuation of operations with a reduced workforce and with flexible staffing arrangements that are responsive to evolving needs, to the extent such waivers or variances are permitted under federal law:

- (1) Hospital Licensing Rule;
- (2) Hospital Reporting Rule;
- (3) Nursing Home Licensing and Operating Rule;
- (4) Home Health Agency Designation and Operation Regulations;
- (5) Residential Care Home Licensing Regulations;
- (6) Assisted Living Residence Licensing Regulations;
- (7) Home for the Terminally Ill Licensing Regulations;

- 1 (8) Standards for Adult Day Services;
- 2 (9) Therapeutic Community Residences Licensing Regulations;
- 3 (10) Choices for Care High/Highest Manual;
- 4 (11) Designated and Specialized Service Agency designation and  
5 provider rules;
- 6 (12) Child Care Licensing Regulations;
- 7 (13) Public Assistance Program Regulations;
- 8 (14) Foster Care and Residential Program Regulations; and
- 9 (15) other rules and standards for which the Agency of Human Services  
10 is the adopting authority under 3 V.S.A. chapter 25.

11 Sec. 5. GREEN MOUNTAIN CARE BOARD RULES; WAIVER OR  
12 VARIANCE PERMITTED (proposed language coming soon)

13 (a) Notwithstanding any provision of 18 V.S.A. chapter 220 or 221,  
14 8 V.S.A. § 4062, 33 V.S.A. chapter 18, subchapter 1, or the Green Mountain  
15 Care Board’s administrative rules, guidance, or standards to the contrary,  
16 through March 31, ~~2023~~ 2024, the Green Mountain Care Board may waive or  
17 permit variances from State laws, guidance, and standards with respect to the  
18 following regulatory activities, to the extent permitted under federal law, as  
19 necessary to prioritize and maximize direct patient care, safeguard the stability  
20 of health care providers, and allow for orderly regulatory processes that are  
21 responsive to evolving needs related to the COVID-19 pandemic:

- 1 (1) hospital budget review;
- 2 (2) certificates of need;
- 3 (3) health insurance rate review; and
- 4 (4) accountable care organization certification and budget review.

5 (b) As part of any proceeding conducted on or after February 1, 2022 to  
6 establish or enforce a hospital’s fiscal year 2022 or 2023 budget, the Green  
7 Mountain Care Board shall consider the hospital’s extraordinary labor costs  
8 and investments, as well as the impacts of those costs and investments on the  
9 affordability of health care.

10 Sec. 6. MEDICAID AND HEALTH INSURERS; PROVIDER  
11 ENROLLMENT AND CREDENTIALING

12 Until March 31, ~~2023~~ 2024, and to the extent permitted under federal law,  
13 the Department of Vermont Health Access shall relax provider enrollment  
14 requirements for the Medicaid program, and the Department of Financial  
15 Regulation shall direct health insurers to relax provider credentialing  
16 requirements for health insurance plans, in order to allow for individual health  
17 care providers to deliver and be reimbursed for services provided across health  
18 care settings as needed to respond to Vermonters’ evolving health care needs.

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20 Sec. 8. ACCESS TO HEALTH CARE SERVICES; DEPARTMENT OF  
21 FINANCIAL REGULATION; EMERGENCY RULEMAKING

1 (a) It is the intent of the General Assembly to increase Vermonters' access  
2 to medically necessary health care services during and after a declared state of  
3 emergency in Vermont as a result of COVID-19.

4 (b)(1) ~~Until April 1, 2023~~ Through March 31, 2024, and notwithstanding  
5 any provision of 3 V.S.A. § 844 to the contrary, the Department of Financial  
6 Regulation shall consider adopting, and shall have the authority to adopt,  
7 emergency rules ~~to address the following through March 31, 2023:~~

8 ~~(A)~~ expanding health insurance coverage for, and waiving or limiting  
9 cost-sharing requirements directly related to, the diagnosis of COVID-19,  
10 including tests for influenza, pneumonia, and other respiratory viruses  
11 performed in connection with making a COVID-19 diagnosis; the treatment of  
12 COVID-19 when it is the primary or a secondary diagnosis; and the prevention  
13 of COVID-19; ~~and~~

14 ~~(B) modifying or suspending health insurance plan deductible~~  
15 ~~requirements for all prescription drugs, except to the extent that such an action~~  
16 ~~would disqualify a high deductible health plan from eligibility for a health~~  
17 ~~savings account pursuant to 26 U.S.C. § 223.~~

18 (2) Any rules adopted in accordance with this subsection shall remain in  
19 effect until not later than April 1, ~~2023~~ 2024.

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\* \* \* Regulation of Professions \* \* \*

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Sec. 17. OFFICE OF PROFESSIONAL REGULATION; BOARD OF  
MEDICAL PRACTICE; OUT-OF-STATE HEALTH CARE  
PROFESSIONALS

(a) Notwithstanding any provision of Vermont’s professional licensure statutes or rules to the contrary, through March 31, ~~2023~~ 2024, a health care professional, including a mental health professional, who holds a valid license, certificate, or registration to provide health care services in any other U.S. jurisdiction in a profession regulated by the Board of Medical Practice, or in a profession regulated by the Office of Professional Regulation for which the Office does not provide a pathway to provisional licensure under 3 V.S.A. § 130, shall be deemed to be licensed, certified, or registered to provide health care services, including mental health services, to a patient located in Vermont as a volunteer member of the Medical Reserve Corps or, for a period not to exceed six months, as part of the staff of a licensed facility, other health care facility as defined in 18 V.S.A. § 9432, or federally qualified health center, provided the health care professional:

(1) is licensed, certified, or registered in good standing in the other U.S. jurisdiction or jurisdictions in which the health care professional holds a license, certificate, or registration;

1           (2) is not subject to any professional disciplinary proceedings in any  
2 other U.S. jurisdiction; and

3           (3) is not affirmatively barred from practice in Vermont for reasons of  
4 fraud or abuse, patient care, or public safety.

5           (b) A health care professional who plans to provide health care services in  
6 Vermont as a volunteer member of the Medical Reserve Corps or as part of the  
7 staff of a licensed facility, other health care facility as defined in 18 V.S.A.  
8 § 9432, or federally qualified health center shall submit or have submitted on  
9 the individual’s behalf the individual’s name, contact information, and the  
10 location or locations at which the individual will be practicing to:

11           (1) the Board of Medical Practice for medical doctors, physician  
12 assistants, and podiatrists; or

13           (2) the Office of Professional Regulation for all other health care  
14 professions.

15           (c) A health care professional who delivers health care services in Vermont  
16 pursuant to subsection (a) of this section shall be subject to the imputed  
17 jurisdiction of the Board of Medical Practice or the Office of Professional  
18 Regulation, as applicable based on the health care professional’s profession, in  
19 accordance with Sec. 19 of this act.

20           (d)(1) This section shall remain in effect through March 31, ~~2023~~ 2024,  
21 provided the health care professional remains licensed, certified, or registered

1 in good standing throughout the period the health care professional is  
2 practicing in Vermont, which shall not exceed six months for a health care  
3 professional providing health care services as part of the staff of a licensed  
4 facility, other health care facility as defined in 18 V.S.A. § 9432, or federally  
5 qualified health center.

6 (2) The Board of Medical Practice and Office of Professional  
7 Regulation shall provide appropriate notice of the March 31, ~~2023~~ 2024  
8 expiration date of this section to:

9 (A) health care professionals providing health care services in  
10 Vermont under this section;

11 (B) the Medical Reserve Corps; and

12 (C) health care facilities and federally qualified health centers at  
13 which health care professionals are providing services under this section.

14 (e) Nothing in this section is intended to limit, restrict, or modify the  
15 application of existing or future federal waivers of health care professional  
16 licensure requirements to licensed and certified facilities.

17 (f) Health care facilities, health insurers, and Vermont Medicaid shall  
18 consider deemed licensure, certification, or registration pursuant this section as  
19 sufficient to meet applicable Vermont licensure, certification, or registration  
20 requirements for the purposes of health care professional credentialing and  
21 enrollment.



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\* \* \* Telehealth \* \* \*

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Sec. 26. WAIVER OF CERTAIN TELEHEALTH REQUIREMENTS  
FOR A LIMITED TIME

Notwithstanding any provision of 8 V.S.A. § 4100k or 18 V.S.A. § 9361 to the contrary, through March 31, ~~2023~~ 2024, the following provisions related to the delivery of health care services through telemedicine or by store-and-forward means shall not be required, to the extent their waiver is permitted by federal law or guidance regarding enforcement discretion:

(1) delivering health care services, including dental services, using a connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 in accordance with 8 V.S.A. § 4100k(i), as amended by this act, if it is not practicable to use such a connection under the circumstances;

(2) representing to a patient that the health care services, including dental services, will be delivered using a connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 in accordance with 18 V.S.A. § 9361(c), if it is not practicable to use such a connection under the circumstances.

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1       Sec. 2. 2020 Acts and Resolves No. 140, Sec. 15, as amended by 2021 Acts  
2       and Resolves No. 6, Sec. 2 and 2022 Acts and Resolves No. 85, Sec. 2, is  
3       further amended to read:

4           Sec. 15. BOARD OF MEDICAL PRACTICE; TEMPORARY  
5                       PROVISIONS; PHYSICIANS, PHYSICIAN ASSISTANTS,  
6                       AND PODIATRISTS

7           (a) Notwithstanding any provision of 26 V.S.A. § 1353(11) to the contrary,  
8       the Board of Medical Practice or its Executive Director may issue a temporary  
9       license through March 31, ~~2023~~ 2024 to an individual who is licensed to  
10      practice as a physician, physician assistant, or podiatrist in another jurisdiction,  
11      whose license is in good standing, and who is not subject to disciplinary  
12      proceedings in any other jurisdiction. The temporary license shall authorize  
13      the holder to practice in Vermont until a date not later than April 1, ~~2023~~ 2024,  
14      provided the licensee remains in good standing.

15          (b) Through March 31, ~~2023~~ 2024, the Board of Medical Practice or its  
16      Executive Director may waive requirements for physician assistants, including  
17      scope of practice requirements and the requirement for documentation of the  
18      relationship between a physician assistant and a physician pursuant to  
19      26 V.S.A. § 1735a. The Board or Executive Director may impose limitations  
20      or conditions when granting a waiver under this subsection.

1 ~~Sec. 3. 2020 Acts and Resolves No. 178, Sec. 12a, as amended by 2021 Acts~~  
2 ~~and Resolves No. 6, Sec. 2a and 2022 Acts and Resolves No. 85, Sec. 3, is~~  
3 ~~further amended to read:~~

4 ~~Sec. 12a. SUNSET OF PHARMACIST AUTHORITY TO ORDER OR~~  
5 ~~ADMINISTER SARS-COV TESTS~~

6 ~~In Sec. 11, 26 V.S.A. § 2023(b)(2)(A)(x) (clinical pharmacy prescribing;~~  
7 ~~State protocol; SARS-CoV testing) shall be repealed on March 31, 2023.~~  
8 ~~[Deleted.]~~

9 ~~Sec. 4. 18 V.S.A. § 9701 is amended to read:~~

10 § 9701. DEFINITIONS

11 As used in this chapter:

12 \* \* \*

13 ~~(35) “Remote witness” means a witness who is not physically present~~  
14 ~~when a principal signs an advance directive.~~

15 ~~Sec. 5. 18 V.S.A. § 9703 is amended~~

16 § 9703. FORM AND EXECUTION

17 (a) An adult with capacity may execute an advance directive at any time.

18 ~~(b)(1)~~ The advance directive shall be dated, executed by the principal or by  
19 another individual in the principal’s presence at the principal’s express  
20 direction if the principal is physically unable to do so, and signed ~~in the~~  
21 ~~presence of by~~ two or more witnesses at least 18 years of age, who shall sign

1 and affirm that the principal appeared to understand the nature of the document  
2 and to be free from duress or undue influence at the time the advance directive  
3 was signed.

4 (2) On and after April 1, 2023, the principal shall have either signed  
5 in the physical presence of each witness or the following conditions shall have  
6 been met with respect to each remote witness:

7 (A) the principal and the remote witness were known to each other;

8 (B) based on video or telephonic communication between the  
9 principal and the remote witness, the remote witness attested that the principal  
10 seemed to understand the nature of the document and to be free from duress or  
11 undue influence at the time the advance directive was signed; and

12 (C) the principal included on the advance directive the name and  
13 contact information for the remote witness and the nature of the principal's  
14 relationship to the remote witness.

15 (3) A health care provider may serve as a witness to the principal's  
16 execution of the advance directive under this subsection.

17 (4) If the principal is being admitted to or is a resident of a nursing home  
18 or residential care facility or is being admitted to or is a patient in a hospital at  
19 the time of execution, the individual who explained the nature and effect of the  
20 advance directive to the principal pursuant to subsection (d) or (e) of this

1 section may also serve as one of the witnesses to the principal’s execution of  
2 the advance directive under this subsection.

3 (c) Neither the agent appointed by the principal nor the principal’s spouse,  
4 parent, adult sibling, adult child, or adult grandchild may witness the advance  
5 directive.

6 (d)(1) An advance directive shall not be effective if, at the time of  
7 execution, the principal is being admitted to or is a resident of a nursing home  
8 as defined in 33 V.S.A. § 7102 or a residential care facility, unless one of the  
9 following individuals explains the nature and effect of an advance directive to  
10 the principal and signs a statement affirming that ~~he or she~~ the individual has  
11 provided the explanation:

12 (A) an ombudsman;

13 (B) a recognized member of the clergy;

14 (C) an attorney licensed to practice in this State;

15 (D) a Probate Division of the Superior Court designee;

16 (E) an individual designated by a hospital pursuant to subsection  
17 9709(d) of this title;

18 (F) a mental health patient representative;

19 (G) an individual who is volunteering at the nursing home or

20 residential care facility without compensation and has received appropriate

21 training regarding the explanation of advance directives; or

1 (H) a clinician, as long as the clinician is not employed by the  
2 nursing home or residential care facility at the time of the explanation.

3 (2) It is the intent of this subsection to ensure that residents of nursing  
4 homes and residential care facilities are willingly and voluntarily executing  
5 advance directives.

6 (3) The individual who explains the nature and effect of an advance  
7 directive to the principal under this subsection may be physically present in the  
8 same location as the principal at the time of the explanation or may deliver the  
9 explanation to the principal by video or telephone.

10 (e)(1) An advance directive shall not be effective if, at the time of  
11 execution, the principal is being admitted to or is a patient in a hospital, unless  
12 one of the following individuals ~~has explained~~ explains the nature and effect of  
13 an advance directive to the principal and signs a statement affirming that ~~he or~~  
14 ~~she~~ the individual has provided the explanation:

15 (1)(A) an ombudsman;

16 (2)(B) a recognized member of the clergy;

17 (3)(C) an attorney licensed to practice in this State;

18 (4)(D) a Probate Division of the Superior Court designee;

19 (5)(E) an individual designated by the hospital pursuant to subsection

20 9709(d) of this title; or

21 (6)(F) a mental health patient representative.

1           (2) The individual who explains the nature and effect of an advance  
2           directive to the principal under this subsection may be physically present in the  
3           same location as the principal at the time of the explanation or may deliver the  
4           explanation to the principal by video or telephone.

5           (f) A durable power of attorney for health care, terminal care document, or  
6           advance directive executed prior to the enactment of this chapter shall be a  
7           valid advance directive if the document complies with the statutory  
8           requirements in effect at the time the document was executed or with the  
9           provisions of this chapter.

10           (g) A principal, a witness, or an individual who explains an advance  
11           directive under subsection (d) or (e) of this section may sign the advance  
12           directive or the explanation affirmation statement using an electronic signature,  
13           provided that the electronic signature complies with the Uniform Electronic  
14           Transaction Act, 9 V.S.A. chapter 20.

15           Sec. 6. 18 V.S.A. § 9721 is amended to read:

16           § 9721. ADVANCE DIRECTIVES; COVID-19; REMOTE WITNESSES  
17           AND EXPLAINERS; ADVANCE DIRECTIVES EXECUTED  
18           BETWEEN FEBRUARY 15, 2020 AND MARCH 31, 2023

19           (a) As used in this section, “remote witness” means a witness who is not  
20           physically present when a principal signs an advance directive. [Repealed.]

1 (b)(1) Notwithstanding any provision of subsection 9703(b) of this title to  
2 the contrary, an advance directive executed by a principal between February  
3 15, 2020 and June 15, 2020 shall be deemed to be valid even if the principal  
4 signed the advance directive outside the physical presence of one or both of the  
5 required witnesses, provided all of the following conditions were met with  
6 respect to each remote witness:

7 (A) the principal and the remote witness were known to each other;

8 (B) the remote witness was informed about the role of a witness to  
9 the execution of an advance directive; and

10 (C) the principal included on the advance directive the name and  
11 contact information for the witness.

12 (2) An advance directive executed as set forth in subdivision (1) of this  
13 subsection shall be valid until June 30, 2021 unless amended, revoked, or  
14 suspended by the principal in accordance with this chapter prior to that date.

15 (c)(1) Notwithstanding any provision of subsection 9703(b) of this title to  
16 the contrary, an advance directive executed by a principal between June 15,  
17 2020 and March 31, 2023 shall be deemed to be valid even if the principal  
18 signed the advance directive outside the physical presence of one or both of the  
19 required witnesses, provided all of the following conditions are met with  
20 respect to each remote witness:

21 (A) the principal and the remote witness were known to each other;



1           (B) based on video or telephonic communication between the  
2 principal and the remote witness, the remote witness attested that the principal  
3 seemed to understand the nature of the document and to be free from duress or  
4 undue influence at the time the advance directive was signed; and

5           (C) the principal included on the advance directive the name and  
6 contact information for the remote witness and the nature of the principal’s  
7 relationship to the remote witness.

8           (2) An advance directive executed as set forth in subdivision (1) of this  
9 subsection shall remain valid unless amended, revoked, or suspended by the  
10 principal in accordance with this chapter.

11           (d)(1) Notwithstanding any provision of subsection 9703(d) or (e) of this  
12 title to the contrary, an advance directive executed by a principal between  
13 February 15, 2020 and March 31, 2023 while the principal was being admitted  
14 to or was a resident of a nursing home or residential care facility or was being  
15 admitted to or was a patient in a hospital shall be deemed to be valid even if  
16 the individual who explained the nature and effect of the advance directive to  
17 the principal in accordance with subsection 9703(d) or (e) of this title, as  
18 applicable, was not physically present in the same location as the principal at  
19 the time of the explanation, provided the individual delivering the explanation  
20 was communicating with the principal by video or telephone.

1           (2) An advance directive executed in accordance with this subsection  
2 shall remain valid as set forth in subsection (b) or (c) of this section, as  
3 applicable.

4           (e) On and after April 1, 2023, advance directives shall only be executed in  
5 accordance with section 9703 of this chapter.

6           Sec. 7. 18 V.S.A. § 4755 is added to read:

7           § 4755. BUPRENORPHINE; PRESCRIPTION RENEWALS

8           To the extent permitted under federal law, a health care professional  
9 authorized to prescribe buprenorphine for treatment of substance use disorder  
10 may authorize renewal of a patient’s existing buprenorphine prescription  
11 without requiring an office visit, provided that the health care professional  
12 conducts a visit with the patient by telemedicine, as defined in 8 V.S.A.  
13 § 4100k, or audio-only telephone.

14           Sec. 8. BOARD OF MEDICAL PRACTICE; PHYSICIAN LICENSURE;  
15           REPORT

16           On or before January 15, 2024, the Board of Medical Practice shall report to  
17 the House Committee on Health Care and the Senate Committee on Health and  
18 Welfare regarding options for streamlining and modernizing the physician  
19 licensure process, such as:

20           (1) alternatives to requiring an original birth certificate as a method of  
21 proving identification;

1           (2) the status of obtaining fingerprint-supported background checks and  
2           being able to serve as the State of Principal Licensure for purposes of  
3           participation in the Interstate Medical Licensure Compact;

4           (3) offering provisional licenses pending full document verification; and

5           (4) allowing Board of Medical Practice staff to approve uncomplicated  
6           license applications.

7           Sec. 9. EFFECTIVE DATES

8           This act shall take effect on passage, except that Sec. 5 (18 V.S.A. § 9703)  
9           shall take effect on April 1, 2023.