

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

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.

19 * * *

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 purpose of health care professional credentialing and
21 enrollment; provided, however, that this deemed satisfaction of the licensure,

1 certification, and registration requirements shall have no impact on any other
2 credentialing or enrollment requirement.

3 * * *

4 * * * Telehealth * * *

5 * * *

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

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

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

18 (2) representing to a patient that the health care services, including
19 dental services, will be delivered using a connection that complies with the
20 requirements of the Health Insurance Portability and Accountability Act of

1 1996, Pub. L. No. 104-191 in accordance with 18 V.S.A. § 9361(c), if it is not
2 practicable to use such a connection under the circumstances.

3 * * *

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

7 Sec. 15. BOARD OF MEDICAL PRACTICE; TEMPORARY
8 PROVISIONS; PHYSICIANS, PHYSICIAN ASSISTANTS,
9 AND PODIATRISTS

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

18 (b) Through March 31, ~~2023~~ 2024, the Board of Medical Practice or its
19 Executive Director may waive requirements for physician assistants, including
20 scope of practice requirements and the requirement for documentation of the
21 relationship between a physician assistant and a physician pursuant to

1 26 V.S.A. § 1735a. The Board or Executive Director may impose limitations
2 or conditions when granting a waiver under this subsection.

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

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

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

10 [Deleted.]

11 **Sec. 4. 2022 Acts and Resolves No. 85, Sec. 6 is amended to read:**

12 Sec. 6. TEMPORARY TELEHEALTH REGISTRATION FOR OUT-OF-
13 STATE HEALTH CARE PROFESSIONALS

14 **(a)** Notwithstanding any provision of Vermont’s professional licensure
15 statutes or rules to the contrary, **from the period from beginning on** April 1,
16 2022 **through June 30, 2023**, the Office of Professional Regulation and Board
17 of Medical Practice shall register a health care professional who is not licensed
18 or registered to practice in Vermont but who seeks to provide health care
19 services to patients or clients located in Vermont using telehealth, provided:

1 (1) the health care professional completes an application in the manner
2 specified by the Director of the Office of Professional Regulation or the Board
3 of Medical Practice, as applicable; and

4 (2)(A) the health care professional holds an active, unencumbered license,
5 certificate, or registration in at least one other U.S. jurisdiction to practice the
6 health care profession for which the health care professional seeks to provide
7 telehealth services in Vermont;

8 (B) the health care professional’s license, certificate, or registration is in
9 good standing in all other U.S. jurisdictions in which the health care
10 professional is licensed, certified, or registered to practice; and

11 (C) the health care professional provides verification of licensure,
12 certification, or registration to the Office or the Board, as applicable.

13 (b) The temporary telehealth registration option available pursuant to this
14 section shall continue to be available to out-of-state health care professionals
15 until the telehealth licensure and registration system established in 26 V.S.A.
16 chapter 56 by 2022 Acts and Resolves No. 107 is operational. The Office of
17 Professional Regulation and Board of Medical Practice shall provide
18 appropriate notice to health care professionals registered under this section of
19 the expiration date of the temporary telehealth registration option and shall

1 allow temporary telehealth registrants 90 days to transition from temporary
2 registration to a telehealth license or registration under 26 V.S.A. chapter 56.

3 Sec. 5. 18 V.S.A. § 9701 is amended to read:

4 § 9701. DEFINITIONS

5 As used in this chapter:

6 * * *

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

9 Sec. 6. 18 V.S.A. § 9703 is amended

10 § 9703. FORM AND EXECUTION

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

12 (b)(1) The advance directive shall be dated, executed by the principal or by
13 another individual in the principal’s presence at the principal’s express
14 direction if the principal is physically unable to do so, and signed in the
15 presence of by two or more witnesses at least 18 years of age, who shall sign
16 and affirm that the principal appeared to understand the nature of the document
17 and to be free from duress or undue influence at the time the advance directive
18 was signed.

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

- 1 (A) the principal and the remote witness were known to each other;
2 (B) based on video or telephonic communication between the
3 principal and the remote witness, the remote witness attested that the principal
4 seemed to understand the nature of the document and to be free from duress or
5 undue influence at the time the advance directive was signed; and
6 (C) the principal included on the advance directive the name and
7 contact information for the remote witness and the nature of the principal’s
8 relationship to the remote witness.

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

11 (4) If the principal is being admitted to or is a resident of a nursing home
12 or residential care facility or is being admitted to or is a patient in a hospital at
13 the time of execution, the individual who explained the nature and effect of the
14 advance directive to the principal pursuant to subsection (d) or (e) of this
15 section may also serve as one of the witnesses to the principal’s execution of
16 the advance directive under this subsection.

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

20 (d)(1) An advance directive shall not be effective if, at the time of
21 execution, the principal is being admitted to or is a resident of a nursing home

1 as defined in 33 V.S.A. § 7102 or a residential care facility, unless one of the
2 following individuals explains the nature and effect of an advance directive to
3 the principal and signs a statement affirming that ~~he or she~~ the individual has
4 provided the explanation:

5 (A) an ombudsman;

6 (B) a recognized member of the clergy;

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

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

9 (E) an individual designated by a hospital pursuant to subsection
10 9709(d) of this title;

11 (F) a mental health patient representative;

12 (G) an individual who is volunteering at the nursing home or
13 residential care facility without compensation and has received appropriate
14 training regarding the explanation of advance directives; or

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

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

20 (3) The individual who explains the nature and effect of an advance
21 directive to the principal under this subsection may be physically present in the

1 same location as the principal at the time of the explanation or may deliver the
2 explanation to the principal by video or telephone.

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

8 ~~(1)(A)~~ an ombudsman;

9 ~~(2)(B)~~ a recognized member of the clergy;

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

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

12 ~~(5)(E)~~ an individual designated by the hospital pursuant to subsection
13 9709(d) of this title; or

14 ~~(6)(F)~~ a mental health patient representative.

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

19 (f) A durable power of attorney for health care, terminal care document, or
20 advance directive executed prior to the enactment of this chapter shall be a
21 valid advance directive if the document complies with the statutory

1 requirements in effect at the time the document was executed or with the
2 provisions of this chapter.

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

8 Sec. 7. 18 V.S.A. § 9721 is amended to read:

9 § 9721. ADVANCE DIRECTIVES; COVID-19; REMOTE WITNESSES
10 AND EXPLAINERS; ADVANCE DIRECTIVES EXECUTED
11 BETWEEN FEBRUARY 15, 2020 AND MARCH 31, 2023

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

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

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

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

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

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

8 (c)(1) Notwithstanding any provision of subsection 9703(b) of this title to
9 the contrary, an advance directive executed by a principal between June 15,
10 2020 and March 31, 2023 shall be deemed to be valid even if the principal
11 signed the advance directive outside the physical presence of one or both of the
12 required witnesses, provided all of the following conditions are met with
13 respect to each remote witness:

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

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

19 (C) the principal included on the advance directive the name and
20 contact information for the remote witness and the nature of the principal's
21 relationship to the remote witness.

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

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

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

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

19 Sec. 8. 18 V.S.A. § 4755 is added to read:

20 § 4755. BUPRENORPHINE; PRESCRIPTION RENEWALS

1 To the extent permitted under federal law, a health care professional
2 authorized to prescribe buprenorphine for treatment of substance use disorder
3 may authorize renewal of a patient’s existing buprenorphine prescription
4 without requiring an office visit, provided that the health care professional
5 conducts a visit with the patient by telemedicine, as defined in 8 V.S.A.
6 § 4100k, or audio-only telephone.

7 Sec. 9. BOARD OF MEDICAL PRACTICE; PHYSICIAN LICENSURE;
8 REPORT

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

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

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

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

19 (4) allowing Board of Medical Practice staff to approve uncomplicated
20 license applications.

21 Sec. 10. EFFECTIVE DATES

- 1 This act shall take effect on passage, except that Sec. 6 (18 V.S.A. § 9703)
- 2 shall take effect on April 1, 2023.