

H.411

An act relating to extending COVID-19 health care regulatory flexibility

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

Sec. 1. 2020 Acts and Resolves No. 91, as amended by 2020 Acts and Resolves No. 140, Sec. 13, 2020 Acts and Resolves No. 159, Sec. 10, 2021 Acts and Resolves No. 6, Secs. 1 and 3, 2021 Acts and Resolves No. 69, Sec. 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;
- (8) Standards for Adult Day Services;
- (9) Therapeutic Community Residences Licensing Regulations;
- (10) Choices for Care High/Highest Manual;
- (11) Designated and Specialized Service Agency designation and provider rules;
- (12) Child Care Licensing Regulations;
- (13) Public Assistance Program Regulations;
- (14) Foster Care and Residential Program Regulations; and
- (15) other rules and standards for which the Agency of Human Services is the adopting authority under 3 V.S.A. chapter 25.

Sec. 5. GREEN MOUNTAIN CARE BOARD RULES; WAIVER OR
VARIANCE PERMITTED

- (a) Notwithstanding any provision of 18 V.S.A. chapter 220 or 221, 8 V.S.A. § 4062, 33 V.S.A. chapter 18, subchapter 1, or the Green Mountain

Care Board's administrative rules, guidance, or standards to the contrary, through March 31, ~~2023~~ 2024, the Green Mountain Care Board may waive or permit variances from State laws, guidance, and standards with respect to the following regulatory activities, to the extent permitted under federal law, as necessary to prioritize and maximize direct patient care, safeguard the stability of health care providers, and allow for orderly regulatory processes that are responsive to evolving needs related to the COVID-19 pandemic:

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

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

Sec. 6. MEDICAID AND HEALTH INSURERS; PROVIDER

ENROLLMENT AND CREDENTIALING

Until March 31, ~~2023~~ 2024, and to the extent permitted under federal law, the Department of Vermont Health Access shall relax provider enrollment requirements for the Medicaid program, and the Department of Financial

Regulation shall direct health insurers to relax provider credentialing requirements for health insurance plans, in order to allow for individual health care providers to deliver and be reimbursed for services provided across health care settings as needed to respond to Vermonters' evolving health care needs.

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* * * Access to Health Care Services and Human Services * * *

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

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

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

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

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

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

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Sec. 12. BUPRENORPHINE; PRESCRIPTION RENEWALS

Through March 31, ~~2023~~ 2024, to the extent permitted under federal law, a health care professional authorized to prescribe buprenorphine for treatment of substance use disorder may authorize renewal of a patient's existing buprenorphine prescription without requiring an office visit.

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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;

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

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

(b) A health care professional who plans to provide health care services in Vermont as a volunteer member of the Medical Reserve Corps or 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 shall submit or have submitted on

the individual's behalf the individual's name, contact information, and the location or locations at which the individual will be practicing to:

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

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

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

(d)(1) This section shall remain in effect through March 31, ~~2023~~ 2024, provided the health care professional remains licensed, certified, or registered in good standing throughout the period the health care professional is practicing in Vermont, which shall not exceed six months for a health care professional providing health care services 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.

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

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

(B) the Medical Reserve Corps; and

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

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

(f) Health care facilities, health insurers, and Vermont Medicaid shall consider deemed licensure, certification, or registration pursuant this section as sufficient to meet applicable Vermont licensure, certification, or registration requirements for the purpose of health care professional credentialing and enrollment; provided, however, that this deemed satisfaction of the licensure, certification, and registration requirements shall have no impact on any other credentialing or enrollment requirement.

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

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

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

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

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

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

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

[Deleted.]

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

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

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

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

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

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

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

(b) The temporary telehealth registration option available pursuant to this section shall continue to be available to out-of-state health care professionals until the telehealth licensure and registration system established in 26 V.S.A. chapter 56 by 2022 Acts and Resolves No. 107 is operational. The Office of Professional Regulation and Board of Medical Practice shall provide appropriate notice to health care professionals registered under this section of the expiration date of the temporary telehealth registration option and shall allow temporary telehealth registrants 90 days following the effective date of

the applicable telehealth licensure and registration rules to transition from temporary registration to a telehealth license or registration.

Sec. 5. 18 V.S.A. § 9721 is amended to read:

§ 9721. ~~ADVANCE DIRECTIVES; COVID-19; REMOTE WITNESSES~~
AND EXPLAINERS FOR A LIMITED TIME

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(c)(1) Notwithstanding any provision of subsection 9703(b) of this title to the contrary, an advance directive executed by a principal between June 15, 2020 and March 31, ~~2023~~ 2024 shall be deemed to be valid even if the principal signed the advance directive outside the physical presence of one or both of the required witnesses, provided all of the following conditions are met with respect to each remote witness:

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(d)(1) Notwithstanding any provision of subsection 9703(d) or (e) of this title to the contrary, an advance directive executed by a principal between February 15, 2020 and March 31, ~~2023~~ 2024 while the principal was being admitted to or was a resident of a nursing home or residential care facility or was being admitted to or was a patient in a hospital shall be deemed to be valid even if the individual who explained the nature and effect of the advance directive to the principal in accordance with subsection 9703(d) or (e) of this title, as applicable, was not physically present in the same location as the

principal at the time of the explanation, provided the individual delivering the explanation was communicating with the principal by video or telephone.

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

Sec. 6. BOARD OF MEDICAL PRACTICE; PHYSICIAN LICENSURE;
REPORT

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

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

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

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

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

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.