



**State of Vermont**  
**Agency of Human Services**  
Office of the Secretary  
280 State Drive  
Waterbury, VT 05671-1000  
**humanservices.vermont.gov**

Michael K. Smith, *Secretary*

## MEMORANDUM

**TO:** Senate Committee on Health and Welfare  
House Committee on Health Care

**FROM:** Michael K. Smith, Secretary, Agency of Human Services

**RE:** Implementation of Act 91 (H.742) of 2020 – An act relating to Vermont’s response to COVID-19

**DATE:** April 14, 2020

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We are now over four weeks since the Governor declared a State of Emergency in response to the COVID-19 crisis. During that time, and leading up to it, the Agency of Human Services has been working to continue our mission of supporting Vermonters, as well as make incredible adjustments to how we do business. The legislation that was enacted in quick response to the crisis has both directed and permitted our Agency to do the work necessary to respond quickly and thoroughly during this time, and beyond.

In addition to supporting the state’s overall response to the crisis, it is a priority of the Agency to preserve Vermonters’ access to health care services during and after the COVID-19 emergency. Throughout this memo and in our response you will see the ways we are working to buffer providers from financial instability and identifying/assisting providers in financial distress.

What follows is a lengthy summary of the work done across the Agency to date under the framework granted to us by Act 91. Here is just a sampling of the work captured in this memo:

- Guidance issued to our community providers on how to protect their staff and clients
- Rule variances granted, along with emergency rules filed where appropriate
- Directions and announcements put out by the Health Department on how qualified Vermonters can obtain a temporary license during this crisis
- Major expansion in telemedicine/telehealth with a variety of providers and services
- Launched a Medicaid retainer process for providers experiencing cash flow challenges during the crisis

Sec. 1 AGENCY OF HUMAN SERVICES; HEALTH CARE AND HUMAN SERVICE PROVIDER SUSTAINABILITY

- On March 27, the Department of Vermont Health Access (DVHA) issued a COVID-19 Medicaid Retainer Process for providers requiring immediate cash flow assistance. An updated memo was issued on April 10, for the next round of applications.<sup>1</sup>
- On April 3, DVHA issued a notice of temporary Medicaid Long-Term Care facilities rate restructure in response to the COVID-19 emergency by expanding the situations under which a nursing home may apply for extraordinary financial relief (EFR).<sup>2</sup>
- Also on April 3, DVHA implemented a rate restructure for the Private Non-Medical Institutions to allow for greater flexibility.<sup>3</sup>
- Starting with week of March 16<sup>th</sup> DMH and DAIL conducted an assessment and implemented several key fiscal strategies to support the Designated Community Mental Health and Specialized Service Agencies including:
  - o Provide monthly prospective case rate payments and provide flexibility within daily rate billing and adjustment to the end of year reconciliation process to reflect changes in utilization and delivery of services due to COVID19 to support fiscal stability for DA's/SSA's
  - o DMH implemented an emergency Case rate for Success Beyond Six (school based mental health) services to allow continued provision of services and to support fiscal stability of DA's
  - o DMH provided expedited payments for Electronic Medical Records Implementation
- On April 1<sup>st</sup> DMH and DAIL issued a COVID-19 request for financial relief process for DA's and SSA's requiring immediate cash flow and fiscal solvency assistance

Sec. 3 PROTECTIONS FOR EMPLOYEES OF HEALTH CARE FACILITIES AND HUMAN SERVICES PROVIDERS

- o The Department of Mental Health has issued 13 guidance documents to the DAs and other community partners. All guidance can be found here:  
<https://mentalhealth.vermont.gov/coronavirus-covid-19-information-specific-groups/service-providers>
- o The Department for Children and Families/CDD has aligned guidance for child care programs and early childhood prevention and intervention services with VDH guidance:  
<https://www.healthvermont.gov/sites/default/files/documents/pdf/HealthGuidanceforEmergencyProgramsProvidingChildcareforEssentialPersonsRev3-22.pdf>  
On 03/19/2020 DCF Family Services Division, DMH, DAIL and DMH collaborated and offered initial guidance for state licensed residential treatment programs for children and youth. <https://dcf.vermont.gov/sites/dcf/files/CVD19/FSD-GUIDANCE-CHILDREN-YOUTH-RTP.pdf>
- o On 03/19/2020 DCF Family Services Division offered additional specific guidance to state licensed residential treatment programs for children and youth to include reference to VDH guidance.  
<https://dcf.vermont.gov/sites/dcf/files/CVD19/FSD-GUIDANCE-RTP.pdf>
- o Homeless Service Provider Guidance During COVID-19 Virus Outbreak

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<sup>1</sup>[https://dvha.vermont.gov/sites/dvha/files/documents/News/Updated\\_COVID19%20Medicaid%20Retainer%20%20Process%2004.03.20.pdf](https://dvha.vermont.gov/sites/dvha/files/documents/News/Updated_COVID19%20Medicaid%20Retainer%20%20Process%2004.03.20.pdf)

<sup>2</sup><https://dvha.vermont.gov/sites/dvha/files/documents/News/NH%20COVID19%20Relief%20Letter%20FINAL.pdf>

<sup>3</sup><https://dvha.vermont.gov/sites/dvha/files/documents/News/PNMI%20COVID19%20Relief%20Letter%20FINAL.pdf>

<https://dcf.vermont.gov/sites/dcf/files/CVD19/Guidance-Homeless-Technical-Guidance.pdf>

- Social Distancing in Congregate Facilities

<https://dcf.vermont.gov/sites/dcf/files/CVD19/Social-Distancing-Congregate.pdf>

The Department of Disabilities, Aging and Independent (DAIL). DAIL continues to distribute and post links to VDH guidance including access to PPE and staff protection. This includes guidance to employers of independent direct support workers, with posting on ARIS website. DAIL continues to hold teleconferences with licensed facilities.

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

- Vermont Department of Health (VDH) –

**Hospital Licensing Rule**

- Hospital Licensing Notice of Temporary Waiver of Hospital Licensure Requirements/Licensed Bed Limits for Certain Hospital Activities Initiated for Response to the COVID-19 Pandemic
  - In Process
- An [Emergency Rule](#) has been filed in automatically grant 1135 waivers already granted by CMS. (Not technically under Act 91 but relevant)

**Other Rules** (being considered for modification under the Act)

- DNR/COLST to allow for telemedicine
- Opioid Prescribing to allow for telemedicine

- Department for Children and Families/CDD

**Child Care Providers** have been notified that they may be eligible for the following licensing variances:

- The provider would like to provide child care to children of ages not approved on the provider's license. (CBCCPP rule 2.3.11.1. Not applicable to ASP and FCCH.)
- The provider would like to allow one or more staff members to care one-on-one for an Essential Person's child(ren) in either the staff member's home or the home of the Essential Person under the provider's license. Or the provider is a FCCP and would like to care for an Essential Person's child(ren) in their own home instead of in the FCCH. (ASP rule 18.8, CBCCPP rule 2.3.2.3, and FCCH rule 2.3.2.3)
- A fellow child care provider has unused classrooms and is willing to allow a provider to use their space. (ASP rule 18.8, and CBCCPP rule 2.3.2.3. Not applicable to FCCH.)
- The provider found a place to provide child care in another town. (ASP rule 18.8 and CBCCPP rule 2.3.2.3. Not applicable to FCCH.)
- The provider's program director may not be able to be present the required amount of time at the child care program. (ASP rule 5.24 and CBCCPP rule 6.2.4.1. Not applicable to FCCH.)

- Department for Children and Families/FSD

**Foster care regulation**

DCF Family Services Division has provided internal guidance to staff regarding the approval, assessment and licensure of foster care during COVID.

- Any foster parent that is due for re-licensure may provide simplified application/intention to remain licensed. This will suffice for application. Title 3 allows the program to then

remain licensed even after expiration date until future action by the licensing authority to process.

- Internal guidance for staff has allowed the use of virtual communication platforms to assist in the approval of new kinship foster homes. All homes will be reviewed in person at an appropriate time in the future.
- FSD will facilitate Vermont state checks criminal background checks and adult and child abuse registry checks while the fingerprint NCIC system is non-functional.

### **Residential Treatment Program (children and youth) Regulation**

DCF Family Services Division has provided internal guidance to staff regarding the approval, assessment and licensure of residential treatment programs during COVID. Specifically,

- Given that fingerprint identification centers have ceased to operate within the state, FSD has relaxed current regulations expecting these to be complete prior to unsupervised contact between staff and youth. Vermont state checks and adult and child abuse registry checks are still required yet facilitated by FSD as necessary.
  - Programs have been notified that they may share previously hired and vetted staff with each other and that FSD will honor the background checks done by the sharing program when the staff is present at the receiving program.
  - Any program that is due for re-licensure may provide simplified application/intention to remain licensed. This will suffice for application. Title 3 allows the program to then remain licensed even after expiration date until future action by the licensing authority to process.
  - No program will be held liable for necessary isolation as described by public health authorities of COVID compromised youth.
- DCF Family Services Division has modified its child safety intervention function to utilize virtual platforms in some situations. Allegations of substantial child endangerment continue to require in person response.
  - Office of Economic Opportunity  
Extended Housing Support for Vulnerable Homeless Vermonters  
<https://dcf.vermont.gov/dcf-blog/covid19-housing-supports>
  - DAIL is pursuing a large number of changes to reduce personal contact and workload. Some of these require federal Medicaid authority including the national CMS 1135 waiver; Vermont's approved 1135 waiver; a pending 1115 waiver amendment; a pending Appendix K amendment for HCBS programs; and a pending State Plan Amendment (SPA). These are pursued in collaboration with DVHA as well as other departments.

## Sec. 7            INVOLUNTARY TREATMENT; DOCUMENTATION AND REPORTING REQUIREMENTS; WAIVER PERMITTED

- DMH provided guidance to hospitals regarding involuntary collection of a specimen for COVID testing on a psychiatric unit.

## Sec. 13          24-HOUR FACILITIES AND PROGRAMS; BED-HOLD DAYS

- DAIL: Request CMS permission to make payments for bed-hold days (vacant beds) to Medicaid-funded long-term care facilities and other residential facilities and programs providing 24-hour per day services. May apply to State Plan ACCS, CFC ERC, CFC

Adult Family Care, DS Shared Living and licensed residential care, TBI Shared Living and licensed residential care.

- DMH, DCF-FSD, and DAIL-DDSD developed initial guidance for residential programs for children and youth

**Guidance for Residential Programs serving Children and Youth - March 27**

- DVHA, DMH, DCF-FSD developed interim rate setting methodology to support continued flow of anticipated funding despite low census/staffing concerns as well as an expedited process for review of Extraordinary Financial Relief for unanticipated and increased costs related to Covid-19

**Notice of temporary Private Non-Medical Institution rate restructure in response to declared COVID-19 National Health Emergency – April 6**

- DMH is currently working with VDH on developing further guidance for MH 24-hr treatment settings for children, youth and adults

**Coronavirus Quarantine and Admissions Guidance for Inpatient and Residential Facilities - March 13**

Sec. 14      PROFESSIONAL REGULATION

- The Board of Medical Practice within the Vermont Department of Health has worked quickly to implement the temporary licensure provisions of Act 91. There are no fees of any kind to obtain a temporary emergency license. In addition to the information on their website, VDH also issued a press release on April 13 to remind qualified Vermonters and others of the ability to get a temporary license to help during this emergency.

Sec. 22      ISOLATION OR QUARANTINE FOR COVID-19 NOT SECLUSION

- DMH provided guidance to hospitals regarding involuntary quarantining of patients on a psychiatric unit.
- DCF considers this helpful instruction and will honor the language and its impact on regulation.

Sec. 28      SUPPLEMENTAL CHILD CARE GRANTS; TEMPORARY SUSPENSION OF CAP

- CDD has not received any new applications for child care extraordinary relief.

TELEHEALTH

- Vermont Medicaid-participating providers are encouraged to continue the use of telemedicine for health care delivery when possible. Services can be conducted by a provider at a distant site, for a Medicaid members at an originating site, for the purposes of: evaluation, diagnosis, consultation, or treatment, using telecommunications technology via two-way, real-time, audio and video interactive communication.
  - On April 10, DVHA issued guidance for telemedicine coverage for dental services<sup>4</sup>

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<sup>4</sup>[https://dvha.vermont.gov/sites/dvha/files/documents/News/DVHA%20Telemedicine%20%26%20Emergency%20Telephonic%20Coverage\\_Dental%20Providers%2004.10.2020.pdf](https://dvha.vermont.gov/sites/dvha/files/documents/News/DVHA%20Telemedicine%20%26%20Emergency%20Telephonic%20Coverage_Dental%20Providers%2004.10.2020.pdf)

- DVHA has issued and maintained a list of FAQs surrounding Medicaid payments for telephonic services, in addition to hosting webinars on specific topics related to telemedicine<sup>5</sup>
- DMH issued guidance to DA Emergency Services around loosening of potential HIPAA violations related to telemedicine. DMH worked with each DA to have them set up telemedicine assessments with local Emergency Departments. DMH coordinated with all hospitals (still in process) and the state judiciary to ensure there is the capacity to have all involuntary hospitalization and involuntary medication hearing done via teletestimony.
- DMH: Essential Services guidance for DA/SSAs mental health services  
**New Executive Order - Essential Services - March 26**
  - DMH & DVHA leveraged Covid-19 related Medicaid flexibilities to alleviate restrictions on service delivery and payment mechanisms
  - DMH leveraged flexibility in the mental health case rate to allow for adjustments in caseload targets and service volume expectations to better reflect service provision adjustments during this period.
  - DMH communicated this flexibility to all agencies with assurance of an adapted reconciliation process that would allow them to maintain staffing for mental health providers supported by case rate dollars during this time period.
- DCF/CDD: Children’s Integrated Services has implemented telehealth for CIS services usually provided in the home.
- DAIL: Request CMS permission to expand the use of telehealth across DAIL programs as appropriate to the service and the needs of the person.

## FLEXIBILITY

- DMH: Success Beyond Six (SB6) School Mental Health specific changes in place  
**COVID-19 Success Beyond Six Guidance - March 26**
  - All SB6 services may be provided through telehealth (video + audio) or phone (audio only) with the student and/or family in their home or chosen setting during this period
  - DMH lowered minimum thresholds of service to bill SB6 services for the services with case rate/ daily rate
    - School-based clinicians monthly case rate: lowered from 2 hours of a qualifying service per month to 1 hour of a qualifying service per month
    - CERT (therapeutic schools) daily rate: lowered from 2 hours of a qualifying service to 15 minutes of a qualifying service per day
    - Behavioral Intervention Programs were Fee-for-Service and saw biggest impact of reduced service and billing. DMH, in collaboration with DVHA and DAs, created temporary emergency case rate retroactive to March 1 through June 30
  - DMH Adult and children case rate – added more flexibility around minimum case load and utilization requirements
  - Working on incentive/hazard pay for provider workforce

<sup>5</sup> <https://dvha.vermont.gov/sites/dvha/files/documents/News/FAQ%20Telephonic%20Services%20COVID-19%20Emergency%2003.27.20.pdf>