

1 H.655

2 Introduced by Committee on Health Care

3 Date:

4 Subject: Health; health care professionals; telehealth; licensure

5 Statement of purpose of bill as introduced: This bill proposes to express
6 legislative intent to enact a regulatory system that would allow out-of-state
7 health care professionals to become licensed or registered to deliver services to
8 Vermont residents using telehealth.

~~An act relating to establishing a telehealth licensure and registration system~~
*An act relating to telehealth licensure and registration and to provisional
licensure for professions regulated by the Office of Professional Regulation*

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

10 ~~Sec. 1. HEALTH CARE PROFESSIONALS; TELEHEALTH LICENSURE~~

11 ~~AND REGISTRATION; LEGISLATIVE INTENT~~

12 In order to protect Vermont patients and enable continuity of care, it is the
13 intent of the General Assembly to establish a regulatory system for telehealth
14 that would allow a health care professional who is licensed, certified, or
15 registered to provide health care services in another U.S. jurisdiction to obtain
16 a license or registration to deliver health care services to Vermont residents
17 using telehealth.

18 ~~Sec. 2. EFFECTIVE DATE~~

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~~This act shall take effect on passage~~

** * * Telehealth Licensure and Registration * * **

Sec. 1. 26 V.S.A. chapter 56 is added to read:

*CHAPTER 56. TELEHEALTH LICENSURE AND REGISTRATION FOR
OUT-OF-STATE HEALTH CARE PROFESSIONALS*

§ 3051. SCOPE

(a) This chapter shall apply to the following health care professions regulated by the Office of Professional Regulation:

(1) alcohol and drug abuse counseling;

(2) allied mental health professions, including mental health counseling, marriage and family therapy, and services provided by nonlicensed and noncertified psychotherapists;

(3) applied behavior analysis;

(4) athletic training;

(5) audiology;

(6) chiropractic;

(7) dentistry;

(8) dietetics;

(9) midwifery;

(10) naturopathy;

(11) nursing;

(12) nursing home administration;

(13) occupational therapy;

(14) optometry;

(15) osteopathy;

(16) pharmacy;

(17) physical therapy;

(18) psychoanalysis;

(19) psychology;

(20) respiratory care;

(21) social work;

(22) speech language pathology; and

(23) veterinary medicine.

(b) This chapter shall apply to the following health care professions regulated by the Board of Medical Practice:

(1) physicians;

(2) physician assistants; and

(3) podiatrists.

§ 3052. DEFINITIONS

As used in this chapter:

(1) "Board" means the Board of Medical Practice.

(2) “Health care professional” means an individual who holds a valid license, certificate, or registration to provide health care services in any other U.S. jurisdiction in a health care profession listed in section 3051 of this chapter.

(3) “Health care services” means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(4) “In good standing” means that a health care professional holds an active license, certificate, or registration from another U.S. jurisdiction; the health care professional is not subject to a disciplinary order that conditions, suspends, or otherwise restricts the professional’s practice in any other U.S. jurisdiction; and the health care professional is not affirmatively barred from practice in Vermont for any reason, including reasons of fraud or abuse, patient care, or public safety.

(5) “Mandatory disclosure” means the information that the health care professional must disclose to the patient at the initial telehealth visit or consultation, as determined by the relevant regulatory body by rule.

(6) “Office” means the Office of Professional Regulation.

(7) “Store and forward” means an asynchronous transmission of medical information, such as one or more video clips, audio clips, still images, x-rays, magnetic resonance imaging scans, electrocardiograms, electroencephalograms, or laboratory results, sent over a secure connection

that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty. In store and forward, the health care provider at the distant site reviews the medical information without the patient present in real time and communicates a care plan or treatment recommendation back to the patient or referring provider, or both.

(8) “Telehealth” means health care services delivered by telemedicine, store and forward, or audio-only telephone.

(9) “Telemedicine” means the delivery of health care services such as diagnosis, consultation, or treatment through the use of live interactive audio and video over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

§ 3053. TELEHEALTH LICENSURE OR TELEHEALTH REGISTRATION

REQUIRED

(a) A health care professional who is not otherwise licensed, certified, or registered to practice in Vermont but is licensed, certified, or registered in good standing in all other U.S. jurisdictions in which the health care professional is or has been licensed, certified, or registered and who wishes to provide health care services to a patient or client located in Vermont using

telehealth shall obtain a telehealth license or telehealth registration from the Office or the Board in accordance with this chapter.

(b) A telehealth license or telehealth registration issued pursuant to this chapter shall authorize a health care professional to provide services to a patient or client located in Vermont using telehealth only. Telehealth licensure or telehealth registration does not authorize the health care professional to open an office in Vermont or to provide in-person health care services to patients or clients located in Vermont.

(c) A health care professional who is not otherwise licensed, certified, or registered to practice in Vermont and provides health care services in Vermont using telehealth without a telehealth registration or telehealth license, or provides services beyond the limitations of the telehealth registration or telehealth license, is engaged in unauthorized practice as defined in 3 V.S.A. § 127 and section 1314 of this title and is subject to the penalties set forth in those sections.

§ 3054. SCOPE OF TELEHEALTH LICENSE AND TELEHEALTH

REGISTRATION

(a) Telehealth license.

(1) A health care professional who is not otherwise licensed, certified, or registered to practice in Vermont may obtain a telehealth license to provide

health care services using telehealth to a total of not more than 20 unique patients or clients located in Vermont during the two-year license term.

(2) To be eligible to obtain a telehealth license under this chapter, a health care professional shall:

(A) complete an application in a format and with such content as prescribed by the Office or the Board;

(B) hold an active, unencumbered license, certificate, or registration in good standing in any other U.S. jurisdiction to practice the health care profession that the professional seeks to practice in Vermont using telehealth and provide verification of the license, registration, or certificate to the Office or the Board if required by the profession;

(C) if required by the rules adopted by the Office or the Board pursuant to section 3061 of this chapter, submit a copy of a mandatory disclosure that conforms to the requirements established by rule;

(D) if required by the rules adopted by the Office or the Board pursuant section 3061 of this chapter, provide documentation of professional liability coverage or financial responsibility that includes coverage or financial responsibility for services provided by telehealth to patients or clients not located in the health care professional's home state in an amount established by rule;

(E) provide any other information and documentation of qualifications required by the Office or the Board by rule; and

(F) pay the required telehealth licensure fee, which shall be 75 percent of the renewal fee for the profession as set forth in 3 V.S.A. § 125 or in the applicable chapter of this title.

(3) A health care professional may renew a telehealth license every two years upon application and payment of the required fee. A license that has expired shall be reinstated upon payment of the biennial renewal fee and the late renewal penalty, which shall be 75 percent of the late renewal penalty established in 3 V.S.A. § 127 or in section 1401a of this title, as applicable.

(b) Telehealth registration.

(1) A health care professional who is not otherwise licensed, certified, or registered to practice in Vermont may obtain a telehealth registration to provide health care services using telehealth:

(A) for a period of not more than 120 consecutive days from the date the registration was issued; and

(B) to a total of not more than 10 unique patients or clients over the 120-day period that the registration is in effect.

(2) To be eligible to obtain a telehealth registration under this chapter, a health care professional shall:

(A) complete an application in a format and with such content as prescribed by the Office or the Board;

(B) hold an active, unencumbered license, certificate, or registration in good standing in any other U.S. jurisdiction to practice the health care profession that the professional seeks to practice in Vermont using telehealth and provide verification of the license, registration, or certificate to the Office or the Board if required by the profession;

(C) if required by the rules adopted by the Office or the Board pursuant to section 3061 of this chapter, submit a copy of a mandatory disclosure that conforms to the requirements established by rule; and

~~(D) pay the required telehealth registration fee, which shall be 50 percent of the renewal fee for the profession as set forth in 3 V.S.A. § 125 or in the applicable chapter of this title.~~

(D) pay the required telehealth registration fee, which shall be the lesser of:

(i) 50 percent of the renewal fee for the profession as set forth in 3 V.S.A. § 125 or in the applicable chapter of this title; or

(ii) the application fee for a full license for the profession as set forth in 3 V.S.A. § 125 or in the applicable chapter of this title.

(3) A health care professional may only reactivate a telehealth registration once every three years. A telehealth registration shall not be renewed or reactivated upon expiration.

(c) Other license or registration. A health care professional seeking to provide health care services to a patient or client located in Vermont using telehealth may register or apply for a full license to practice the profession in this State in accordance with the applicable provisions of this title. Nothing in this section shall be construed to prohibit a qualified health care professional from registering or obtaining a full license to practice in Vermont in accordance with relevant laws.

(d) Transition to licensure; fee credit.

(1) If a health care professional holding a telehealth registration issued pursuant to this chapter elects to apply for a telehealth license or a full license while the professional's telehealth registration is in effect or within three years following the effective date of the professional's telehealth registration, the amount of the fee paid by the health care professional for the telehealth registration pursuant to subdivision (b)(2)(D) of this section shall be credited and applied toward the amount of the relevant telehealth license under subdivision (a)(2)(F) of this section if the professional is seeking a telehealth license or the application fee for a full license for the profession as set forth in 3 V.S.A. § 125 or in the applicable chapter of this title.

(2) If a health care professional holding a telehealth license issued pursuant to this chapter elects to apply for a full license while the professional's telehealth license is in effect, the amount of the fee paid by the health care professional for the telehealth license pursuant to subdivision (a)(2)(F) of this section shall be credited and applied toward the amount of the application fee for a full license for the profession as set forth in 3 V.S.A. § 125 or in the applicable chapter of this title.

§ 3055. SCOPE OF PRACTICE; STANDARD OF PRACTICE

(a) In order to be eligible for a telehealth license or telehealth registration under this chapter, a health care professional shall hold a license, certificate, or registration in another U.S. jurisdiction that authorizes the provider to engage in the same or a broader scope of practice as health care professionals in the same field are authorized to engage pursuant to a license, certificate, or registration issued in accordance with the relevant provisions of this title.

(b) While practicing in Vermont using telehealth, a health care professional holding a telehealth license or telehealth registration issued pursuant to this chapter shall:

(1) practice within the scope of practice established in this title for that profession; and

(2) practice in a manner consistent with the prevailing and acceptable professional standard of practice for a health care professional who is

licensed, certified, or registered in Vermont to provide in-person health care services in that health care profession.

§ 3056. RECORDS

A health care professional holding a telehealth license or telehealth registration issued pursuant to this chapter shall document in a patient's or client's medical record the health care services delivered using telehealth in accordance with the same standard used for in-person services and shall comply with the requirements of 18 V.S.A. §§ 9361 and 9362 to the extent applicable to the profession. Records, including video, audio, electronic, or other records generated as a result of delivering health care services using telehealth, are subject to all federal and Vermont laws regarding protected health information.

§ 3057. EFFECT OF DISCIPLINARY ACTION ON OUT-OF-STATE

LICENSE, CERTIFICATE, OR REGISTRATION

(a) A health care professional shall not obtain a telehealth license or telehealth registration under this chapter if the health care professional's license, certificate, or registration to provide health care services has been revoked or is subject to a pending disciplinary investigation or action in any other U.S. jurisdiction.

(b) A health care professional holding a telehealth license or telehealth registration under this chapter shall notify the Office or the Board, as

applicable, within five business days following a disciplinary action that places a warning, reprimand, condition, restriction, suspension, or any other disciplinary action on the professional's license, certificate, or registration in any other U.S. jurisdiction or of any other disciplinary action taken or pending against the health care professional in any other U.S. jurisdiction.

§ 3058. JURISDICTION; APPLICATION OF VERMONT LAWS

A health care professional holding a telehealth license or telehealth registration in accordance with this chapter is subject to the laws and jurisdiction of the State of Vermont, including 18 V.S.A. §§ 9361 and 9362 and laws regarding prescribing, health information sharing, informed consent, supervision and collaboration requirements, and unprofessional conduct.

§ 3059. EXEMPTIONS FROM REGISTRATION AND LICENSURE REQUIREMENTS

A health care professional is not required to obtain a telehealth registration or licensure solely to provide consultation services to another health care professional regarding care for a patient or client located in Vermont, provided the consulting health care professional holds a license, certificate, or registration to practice the profession in one or more U.S. jurisdictions and the consultation is based on a review of records without in-person or remote contact between the consulting health care professional and the patient or client.

§ 3060. VENUE

Venue for a civil action initiated by the Office, the Board, or a patient or client who has received telehealth services in Vermont from an out-of-state health care professional holding a telehealth license or telehealth registration shall be in the patient's or client's county of residence or in Washington County.

§ 3061. RULEMAKING

The Office or the Board may adopt rules in accordance with 3 V.S.A. chapter 25 to carry out the purposes of this chapter, including, in consultation with the appropriate boards and advisor appointees for professions regulated by the Office, rules regarding any profession-specific requirements related to telehealth licenses and telehealth registrations.

** * * Provisional Licensure for Professions Regulated by*

*Office of Professional Regulation * * **

Sec. 2. 3 V.S.A. § 130 is added to read:

§ 130. PROVISIONAL LICENSURE

(a) The Director may issue a 90-day provisional license to an individual who has completed an application for full licensure and:

(1) whose eligibility for licensure is contingent upon acceptable verification of licensure from another jurisdiction;

(2) whose eligibility for licensure is contingent upon completion of a background check; or

(3) who is an active-duty member of the U.S. Armed Forces assigned to duty in Vermont or the spouse of such a member.

(b) A provisional license shall be based on a voluntary agreement between the applicant and the Office to expedite the applicant's entry into the workforce, in which the applicant agrees to forgo the procedural rights associated with traditional licensure in exchange for a provisional license pending final determination of the license application.

(c) A provisional license shall only be issued to an applicant who can attest to material facts consistent with the requirements of full licensure, including the applicant's standing in other U.S. jurisdictions, criminal history, and disciplinary history. An individual to whom a provisional license is issued shall expressly agree that the Office may summarily withdraw the provisional license upon discovery of any inconsistency or inaccuracy in the application materials.

(d) An individual aggrieved by a denial or summary withdrawal of a provisional license issued under this section shall have as an exclusive remedy the right to have the individual's application for conventional licensure determined according to the usual process.

(e) The Director may extend a provisional license beyond the initial 90-day period if the reason for issuing the license, as set forth in subdivisions (a)(1)–(3) of this section, has not been resolved.

** * * Appropriation * * **

*Sec. 3. TELEHEALTH LICENSURE AND REGISTRATION SYSTEM;
APPROPRIATION*

The sum of \$360,000.00 is appropriated from the General Fund to the Office of Professional Regulation in fiscal year 2023 to develop and implement the telehealth licensure and registration system established in this act.

** * * Effective Dates * * **

Sec. 4. EFFECTIVE DATES

(a) Sec. 1 (26 V.S.A. chapter 56) shall take effect on July 1, 2023, except that the Office and the Board shall commence the rulemaking process prior to that date in order to have rules in place on July 1, 2023.

(b) Sec. 2 (3 V.S.A. § 130) and this section shall take effect on passage.

(c) Sec. 3 (telehealth licensure and registration system; appropriation) shall take effect on July 1, 2022.