

1 S.117

2 Introduced by Committee on Health and Welfare

3 Date: March 10, 2021

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

5 advance directives; immunization registry

6 Statement of purpose of bill as introduced: This bill proposes to extend until
7 March 31, 2022 certain provisions of 2020 Acts and Resolves Nos. 91 and 140
8 allowing for health care-related regulatory flexibility during and immediately
9 following the COVID-19 pandemic. It would require health insurance
10 coverage of health care services delivered by audio-only telephone and
11 establish requirements for health care providers delivering services in this
12 manner. The bill would also allow remote witnesses for advance directives
13 through June 30, 2022 and permit the Department of Health to provide
14 immunization registry information to the Vermont Health Information
15 Exchange.

16 An act relating to extending health care regulatory flexibility during and
17 after the COVID-19 pandemic and to coverage of health care services
18 delivered by audio-only telephone

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

2 Sec. 1. 2020 Acts and Resolves No. 91, as amended by 2020 Acts and
3 Resolves No. 140, Sec. 13, is further amended to read:

4 * * * Supporting Health Care and Human Service Provider Sustainability * * *

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

7 Through March 31, ~~2021~~ 2022, the Agency of Human Services shall
8 consider modifying existing rules or adopting emergency rules to protect
9 access to health care services, long-term services and supports, and other
10 human services under the Agency's jurisdiction. In modifying or adopting
11 rules, the Agency shall consider the importance of the financial viability of
12 providers that rely on funding from the State, federal government, or
13 Medicaid, or a combination of these, for a major portion of their revenue.

14 * * *

15 * * * Protections for Employees of Health Care Facilities and
16 Human Service Providers * * *

17 Sec. 3. PROTECTIONS FOR EMPLOYEES OF HEALTH CARE
18 FACILITIES AND HUMAN SERVICE PROVIDERS

19 In order to protect employees of a health care facility or human service
20 provider who are not licensed health care professionals from the risks
21 associated with COVID-19, through March 31, ~~2021~~ 2022, all health care

1 facilities and human service providers in Vermont, including hospitals,
2 federally qualified health centers, rural health clinics, residential treatment
3 programs, homeless shelters, home- and community-based service providers,
4 and long-term care facilities, shall follow guidance from the Vermont
5 Department of Health regarding measures to address employee safety, to the
6 extent feasible.

7 * * * Compliance Flexibility * * *

8 Sec. 4. HEALTH CARE AND HUMAN SERVICE PROVIDER

9 REGULATION; WAIVER OR VARIANCE PERMITTED

10 Notwithstanding any provision of the Agency of Human Services'
11 administrative rules or standards to the contrary, through March 31, ~~2021~~
12 2022, the Secretary of Human Services may waive or permit variances from
13 the following State rules and standards governing providers of health care
14 services and human services as necessary to prioritize and maximize direct
15 patient care, support children and families who receive benefits and services
16 through the Department for Children and Families, and allow for continuation
17 of operations with a reduced workforce and with flexible staffing arrangements
18 that are responsive to evolving needs, to the extent such waivers or variances
19 are permitted under federal law:

20 (1) Hospital Licensing Rule;

21 (2) Hospital Reporting Rule;

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

16 * * *

17 Sec. 6. MEDICAID AND HEALTH INSURERS; PROVIDER
18 ENROLLMENT AND CREDENTIALING

- 19 (a) ~~Until the last to terminate of a declared state of emergency in Vermont~~
20 ~~as a result of COVID-19, a declared federal public health emergency as a~~
21 ~~result of COVID-19, and a declared national emergency as a result of COVID-~~

1 19 March 31, 2022, and to the extent permitted under federal law, the
2 Department of Vermont Health Access shall relax provider enrollment
3 requirements for the Medicaid program, and the Department of Financial
4 Regulation shall direct health insurers to relax provider credentialing
5 requirements for health insurance plans, in order to allow for individual health
6 care providers to deliver and be reimbursed for services provided across health
7 care settings as needed to respond to Vermonters' evolving health care needs.

8 ~~(b) In the event that another state of emergency is declared in Vermont as a~~
9 ~~result of COVID-19 after the termination of the State and federal emergencies,~~
10 ~~the Departments shall again cause the provider enrollment and credentialing~~
11 ~~requirements to be relaxed as set forth in subsection (a) of this section.~~

12 * * *

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

14 * * *

15 Sec. 9. PRESCRIPTION DRUGS; MAINTENANCE MEDICATIONS;

16 EARLY REFILLS

17 (a) As used in this section, "health insurance plan" means any health
18 insurance policy or health benefit plan offered by a health insurer, as defined
19 in 18 V.S.A. § 9402. The term does not include policies or plans providing
20 coverage for a specified disease or other limited benefit coverage.

1 (b) Through ~~June 30, 2021~~ March 31, 2022, all health insurance plans and
2 Vermont Medicaid shall allow their members to refill prescriptions for chronic
3 maintenance medications early to enable the members to maintain a 30-day
4 supply of each prescribed maintenance medication at home.

5 (c) As used in this section, “maintenance medication” means a prescription
6 drug taken on a regular basis over an extended period of time to treat a chronic
7 or long-term condition. The term does not include a regulated drug, as defined
8 in 18 V.S.A. § 4201.

9 * * *

10 Sec. 12. BUPRENORPHINE; PRESCRIPTION RENEWALS

11 Through March 31, ~~2021~~ 2022, to the extent permitted under federal law, a
12 health care professional authorized to prescribe buprenorphine for treatment of
13 substance use disorder may authorize renewal of a patient’s existing
14 buprenorphine prescription without requiring an office visit.

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

16 Through March 31, ~~2021~~ 2022, to the extent permitted under federal law,
17 the Agency of Human Services may reimburse Medicaid-funded long-term
18 care facilities and other programs providing 24-hour per day services for their
19 bed-hold days.

1 * * * Regulation of Professions * * *

2 * * *

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

6 (a) Notwithstanding any provision of Vermont’s professional licensure
7 statutes or rules to the contrary, through March 31, ~~2021~~ 2022, a health care
8 professional, including a mental health professional, who holds a valid license,
9 certificate, or registration to provide health care services in any other U.S.
10 jurisdiction shall be deemed to be licensed, certified, or registered to provide
11 health care services, including mental health services, to a patient located in
12 Vermont using telehealth, as a volunteer member of the Medical Reserve
13 Corps, or as part of the staff of a licensed facility or federally qualified health
14 center, provided the health care professional:

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

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

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

1 (b) A health care professional who plans to provide health care services in
2 Vermont as a volunteer member of the Medical Reserve Corps or as part of the
3 staff of a licensed facility or federally qualified health center shall submit or
4 have submitted on the individual's behalf the individual's name, contact
5 information, and the location or locations at which the individual will be
6 practicing to:

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

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

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

16 (d)(1) This section shall remain in effect through March 31, ~~2021~~ 2022,
17 provided the health care professional remains licensed, certified, or registered
18 in good standing.

19 (2) The Board of Medical Practice and Office of Professional
20 Regulation shall provide appropriate notice of the March 31, 2022 expiration
21 date of this section to:

- 1 (A) health care professionals providing health care services in
2 Vermont under this section;
3 (B) the Medical Reserve Corps; and
4 (C) health care facilities and federally qualified health centers at
5 which health care professionals are providing services under this section.

6 Sec. 18. ~~RETIRED HEALTH CARE PROFESSIONALS~~ INACTIVE

7 LICENSEES; BOARD OF MEDICAL PRACTICE; OFFICE OF
8 PROFESSIONAL REGULATION

9 (a)(1) Through March 31, ~~2021~~ 2022, a former health care professional,
10 including a mental health professional, ~~who retired~~ whose Vermont license,
11 certificate, or registration became inactive not more than three years earlier
12 ~~with the individual's Vermont license, certificate, or registration~~ and was in
13 good standing at the time it became inactive may provide health care services,
14 including mental health services, to a patient located in Vermont using
15 telehealth, as a volunteer member of the Medical Reserve Corps, or as part of
16 the staff of a licensed facility or federally qualified health center after
17 submitting, or having submitted on the individual's behalf, to the Board of
18 Medical Practice or Office of Professional Regulation, as applicable, the
19 individual's name, contact information, and the location or locations at which
20 the individual will be practicing.

1 (2) A former health care professional who returns to the Vermont health
2 care workforce pursuant to this subsection shall be subject to the regulatory
3 jurisdiction of the Board of Medical Practice or the Office of Professional
4 Regulation, as applicable.

5 (3) The Board of Medical Practice and Office of Professional
6 Regulation shall provide appropriate notice of the March 31, 2022 expiration
7 date of this section to:

8 (A) health care professionals providing health care services under
9 this section;

10 (B) the Medical Reserve Corps; and

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

13 (b) Through March 31, ~~2021~~ 2022, the Board of Medical Practice and
14 the Office of Professional Regulation may permit former health care
15 professionals, including mental health professionals, ~~who retired~~ whose
16 Vermont license, certificate, or registration became inactive more than three
17 but less than 10 years earlier ~~with their Vermont license, certificate, or~~
18 ~~registration~~ and was in good standing at the time it became inactive to return to
19 the health care workforce on a temporary basis to provide health care services,
20 including mental health services, to patients in Vermont. The Board of
21 Medical Practice and Office of Professional Regulation may issue temporary

1 licenses to these individuals at no charge and may impose limitations on the
2 scope of practice of returning health care professionals as the Board or Office
3 deems appropriate.

4 * * *

5 Sec. 20. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
6 MEDICAL PRACTICE; EMERGENCY AUTHORITY TO ACT
7 FOR REGULATORY BOARDS

8 (a)(1) Through March 31, ~~2021~~ 2022, if the Director of Professional
9 Regulation finds that a regulatory body attached to the Office of Professional
10 Regulation by 3 V.S.A. § 122 cannot reasonably, safely, and expeditiously
11 convene a quorum to transact business, the Director may exercise the full
12 powers and authorities of that regulatory body, including disciplinary
13 authority.

14 (2) Through March 31, ~~2021~~ 2022, if the Executive Director of the
15 Board of Medical Practice finds that the Board cannot reasonably, safely, and
16 expeditiously convene a quorum to transact business, the Executive Director
17 may exercise the full powers and authorities of the Board, including
18 disciplinary authority.

19 (b) The signature of the Director of the Office of Professional Regulation
20 or of the Executive Director of the Board of Medical Practice shall have the
21 same force and effect as a voted act of their respective boards.

1 (c)(1) A record of the actions of the Director of the Office of Professional
2 Regulation taken pursuant to the authority granted by this section shall be
3 published conspicuously on the website of the regulatory body on whose
4 behalf the Director took the action.

5 (2) A record of the actions of the Executive Director of the Board of
6 Medical Practice taken pursuant to the authority granted by this section shall
7 be published conspicuously on the website of the Board of Medical Practice.

8 Sec. 21. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
9 MEDICAL PRACTICE; EMERGENCY REGULATORY
10 ORDERS

11 Through March 31, ~~2021~~ 2022, the Director of Professional Regulation and
12 the Commissioner of Health may issue such orders governing regulated
13 professional activities and practices as may be necessary to protect the public
14 health, safety, and welfare. If the Director or Commissioner finds that a
15 professional practice, act, offering, therapy, or procedure by persons licensed
16 or required to be licensed by Title 26 of the Vermont Statutes Annotated is
17 exploitative, deceptive, or detrimental to the public health, safety, or welfare,
18 or a combination of these, the Director or Commissioner may issue an order to
19 cease and desist from the applicable activity, which, after reasonable efforts to
20 publicize or serve the order on the affected persons, shall be binding upon all
21 persons licensed or required to be licensed by Title 26 of the Vermont Statutes

1 Annotated, and a violation of the order shall subject the person or persons to
2 professional discipline, may be a basis for injunction by the Superior Court,
3 and shall be deemed a violation of 3 V.S.A. § 127.

4 * * *

5 * * * Telehealth * * *

6 * * *

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

9 (a) Notwithstanding any provision of 8 V.S.A. § 4100k or 18 V.S.A.
10 § 9361 to the contrary, through March 31, ~~2021~~ 2022, the following provisions
11 related to the delivery of health care services through telemedicine or by store-
12 and-forward means shall not be required, to the extent their waiver is permitted
13 by federal law:

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

19 (2) representing to a patient that the health care services, including
20 dental services, will be delivered using a connection that complies with the
21 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; ~~and~~.

3 ~~(b)(3) – obtaining and documenting~~ Notwithstanding any provision of 8
4 V.S.A. § 4100k or 18 V.S.A. § 9361 to the contrary, until 60 days following a
5 declared state of emergency in Vermont as a result of COVID-19, a health care
6 provider shall not be required to obtain and document a patient’s oral or
7 written informed consent for the use of telemedicine or store-and-forward
8 technology prior to delivering services to the patient in accordance with 18
9 V.S.A. § 9361(c), if obtaining or documenting such consent, or both, is not
10 practicable under the circumstances.

11 * * *

12 Sec. 2. 2020 Acts and Resolves No. 140, Sec. 15 is amended to read:

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

16 (a) Notwithstanding any provision of 26 V.S.A. § 1353(11) to the contrary,
17 the Board of Medical Practice or its Executive Director may issue a temporary
18 license through March 31, 2021 2022 to an individual who is licensed to
19 practice as a physician, physician assistant, or podiatrist in another jurisdiction,
20 whose license is in good standing, and who is not subject to disciplinary
21 proceedings in any other jurisdiction. The temporary license shall authorize

1 the holder to practice in Vermont until a date not later than April 1, ~~2021~~ 2022,
2 provided the licensee remains in good standing.

3 (b) Through March 31, ~~2021~~ 2022, the Board of Medical Practice or its
4 Executive Director may waive ~~supervision and scope of practice~~ requirements
5 for physician assistants, including scope of practice requirements and the
6 requirement for documentation of the relationship between a physician
7 assistant and a physician pursuant to 26 V.S.A. § 1735a. The Board or
8 Executive Director may impose limitations or conditions when granting a
9 waiver under this subsection.

Sec. 2a. 2020 Acts and Resolves No. 178, Sec. 12a is 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 ~~July 1, 2021~~ March 31,
2022.*

10 Sec. 3. 2020 Acts and Resolves No. 91, Sec. 8, as amended by 2020 Acts and
11 Resolves No. 140, Sec. 13 and 2020 Acts and Resolves No. 159, Sec. 10, is
12 further amended to read:

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

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

1 (b)(1) ~~Until July 1, 2021~~ April 1, 2022, and notwithstanding any provision
2 of 3 V.S.A. § 844 to the contrary, the Department of Financial Regulation shall
3 consider adopting, and shall have the authority to adopt, emergency rules to
4 address the following through ~~June 30, 2021~~ March 31, 2022:

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

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

15 ~~(3)~~ (3) ~~expanding patients' access to and providers' reimbursement for~~
16 ~~health care services, including preventive services, consultation services, and~~
17 ~~services to new patients, delivered remotely through telehealth, audio-only~~
18 ~~telephone, and brief telecommunication services.~~

19 (2) Any rules adopted in accordance with this subsection shall remain in
20 effect until not later than April 1, 2022.

21 Sec. 4. 8 V.S.A. chapter 107, subchapter 14 is amended to read:

1 Subchapter 14. ~~Telemedicine~~ Telehealth

2 * * *

3 § 4100I. COVERAGE OF HEALTH CARE SERVICES DELIVERED BY
4 AUDIO-ONLY TELEPHONE

5 (a) As used in this section:

6 (1) “Health care provider” means a person, partnership, or corporation,
7 other than a facility or institution, that is licensed, certified, or otherwise
8 authorized by law to provide professional health care services in this State to
9 an individual during that individual’s medical care, treatment, or confinement.

10 (2) “Health insurance plan” means any health insurance policy or health
11 benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402;
12 Medicaid, to the extent permitted by the Centers for Medicare and Medicaid
13 Services; and any other public health care assistance program offered or
14 administered by the State or by any subdivision or instrumentality of the State.
15 The term does not include policies or plans providing coverage for a specified
16 disease or other limited benefit coverage.

17 (b)(1) A health insurance plan shall provide coverage for all medically
18 necessary, clinically appropriate health care services delivered remotely by
19 audio-only telephone to the same extent that the plan would cover the services
20 if they were provided through in-person consultation. Services covered under

1 this subdivision shall include services that are covered when provided in the
2 home by home health agencies.

3 (2) A health insurance plan may charge an otherwise permissible
4 deductible, co-payment, or coinsurance for a health care service delivered by
5 audio-only telephone provided that it does not exceed the deductible, co-
6 payment, or coinsurance applicable to an in-person consultation.

7 (3) A health insurance plan shall not require a health care provider to
8 have an existing relationship with a patient in order to be reimbursed for health
9 care services delivered by audio-only telephone.

10 Sec. 5. 18 V.S.A. chapter 219 is amended to read:

11 CHAPTER 219. HEALTH INFORMATION TECHNOLOGY AND
12 TELEMEDICINE TELEHEALTH

13 * * *

14 Subchapter 2. Telemedicine Telehealth

15 * * *

16 § 9362. HEALTH CARE PROVIDERS DELIVERING HEALTH CARE

17 SERVICES BY AUDIO-ONLY TELEPHONE

18 (a) As used in this section, “health insurance plan” and “health care
19 provider” have the same meaning as in 8 V.S.A. § 4100l and “telemedicine”
20 has the same meaning as in 8 V.S.A. § 4100k.

1 (b)(1) Subject to the limitations of the license under which the individual is
2 practicing and, for Medicaid patients, to the extent permitted by the Centers
3 for Medicare and Medicaid Services, a health care provider may deliver health
4 care services to a patient using audio-only telephone if the patient elects to
5 receive the services in this manner and it is clinically appropriate to do so. A
6 health care provider shall comply with any training requirements imposed by
7 the provider's licensing board on the appropriate use of audio-only telephone
8 in health care delivery.

9 (2) A health care provider delivering health care services using audio-
10 only telephone shall include or document in the patient's medical record:

11 (A) the patient's informed consent for receiving services using audio-
12 only telephone in accordance with subsection (c) of this section; and

13 (B) the reason or reasons that the provider determined that it was
14 clinically appropriate to deliver health care services to the patient by audio-
15 only telephone.

16 (3)(A) A health care provider shall not require a patient to receive
17 health care services by audio-only telephone if the patient does not wish to
18 receive services in this manner.

19 (B) A health care provider shall deliver care that is timely and
20 complies with contractual requirements and shall not delay care unnecessarily

1 if a patient elects to receive services through an in-person visit or telemedicine
2 instead of by audio-only telephone.

3 (c) A health care provider delivering health care services by audio-only
4 telephone shall obtain and document a patient's oral or written informed
5 consent for the use of audio-only telephone prior to the appointment or at the
6 start of the appointment but prior to delivering any billable service.

7 (1) The informed consent for audio-only telephone services shall be
8 provided in accordance with Vermont and national policies and guidelines on
9 the appropriate use of telephone services within the provider's profession and
10 shall include, in language that patients can easily understand:

11 (A) that the patient is entitled to choose to receive services by audio-
12 only telephone, in person, or through telemedicine, to the extent clinically
13 appropriate;

14 (B) that receiving services by audio-only telephone does not preclude
15 the patient from receiving services in person or through telemedicine at a later
16 date;

17 (C) an explanation of the opportunities and limitations of delivering
18 and receiving health care services using audio-only telephone;

19 (D) informing the patient of the presence of any other individual who
20 will be participating in or listening to the patient's consultation with the

1 provider and obtaining the patient's permission for the participation or
2 observation;

3 (E) whether the services will be billed to the patient's health
4 insurance plan if delivered by audio-only telephone and what this may mean
5 for the patient's financial responsibility for co-payments, coinsurance, and
6 deductibles; and

7 (F) informing the patient that not all audio-only health care services
8 are covered by all health plans.

9 (2) For services delivered by audio-only telephone on an ongoing basis,
10 the health care provider shall be required to obtain consent only at the first
11 episode of care.

12 (3) If the patient provides oral informed consent, the provider shall offer
13 to provide the patient with a written copy of the informed consent.

14 (4) Notwithstanding any provision of this subsection to the contrary, a
15 health care provider shall not be required to obtain a patient's informed
16 consent for the use of audio-only telephone services in the case of a medical
17 emergency.

18 (5) A health care provider may use a single informed consent form to
19 address all telehealth modalities, including telemedicine, store and forward,
20 and audio-only telephone, as long as the form complies with the provisions of
21 section 9361 of this chapter and this section.

1 (d) Neither a health care provider nor a patient shall create or cause to be
2 created a recording of a provider's telephone consultation with a patient.

3 (e) Audio-only telephone services shall not be used in the following
4 circumstances:

5 (1) for the second certification of an emergency examination
6 determining whether an individual is a person in need of treatment pursuant to
7 section 7508 of this title; or

8 (2) for a psychiatrist's examination to determine whether an individual
9 is in need of inpatient hospitalization pursuant to 13 V.S.A. § 4815(g)(3).

10 Sec. 6. AUDIO-ONLY TELEPHONE; MEDICAL BILLING; DATA
11 COLLECTION; REPORT

12 (a)(1) On or before July 1, 2021, the Department of Financial Regulation,
13 in consultation with the Department of Vermont Health Access, the Green
14 Mountain Care Board, representatives of health care providers, health insurers,
15 and other interested stakeholders, shall determine the appropriate codes or
16 modifiers, or both, to be used by providers and insurers, including Vermont
17 Medicaid to the extent permitted by the Centers for Medicare and Medicaid
18 Services, in the billing of and payment for health care services delivered using
19 audio-only telephone in order to allow for consistent data collection, identify
20 appropriate codes for services that do not have in-person equivalents, and
21 minimize the administrative burden on providers. To the extent possible, the

1 use of codes or modifiers, or both, shall be done in a manner that allows data
2 on the use of audio-only telephone services to be identified using the Vermont
3 Healthcare Claims Uniform Reporting and Evaluation System (VHCURES).

4 (2) Not later than January 1, 2022, all Vermont-licensed health care
5 providers and health insurers offering major medical health insurance plans in
6 Vermont shall use the codes and modifiers determined by the Department of
7 Financial Regulation pursuant to subdivision (1) of this subsection when
8 delivering services by audio-only telephone. Vermont Medicaid shall
9 participate to the extent permitted by the Centers for Medicare and Medicaid
10 Services.

11 (b) On or before December 1, 2023, the Department of Financial
12 Regulation, the Vermont Program for Quality in Health Care, and, to the extent
13 VHCURES data are available, the Green Mountain Care Board shall present
14 information to the House Committee on Health Care and the Senate
15 Committee on Health and Welfare regarding the use of audio-only telephone
16 services in Vermont during calendar year 2022. The Department shall consult
17 with interested stakeholders in order to include in its presentation information
18 on utilization of audio-only telephone services, quality of care, patient
19 satisfaction with receiving health care services by audio-only telephone, the
20 impacts of coverage of audio-only telephone services on health care costs and

1 on access to health care services, and how best to incorporate audio-only
2 telephone services into value-based payments.

3 Sec. 7. AUDIO-ONLY TELEPHONE REIMBURSEMENT AMOUNTS
4 FOR PLAN YEARS 2022, 2023, AND 2024

5 The Department of Financial Regulation, in consultation with the
6 Department of Vermont Health Access, the Green Mountain Care Board,
7 representatives of health care providers, health insurers, and other interested
8 stakeholders, shall determine the amounts that health insurance plans shall
9 reimburse health care providers for delivering health care services by audio-
10 only telephone during plan years 2022, 2023, and 2024. In determining the
11 reimbursement amounts, the Department shall seek to find a reasonable
12 balance between the costs to patients and the health care system and
13 reimbursement amounts that do not discourage health care providers from
14 delivering medically necessary, clinically appropriate health care services by
15 audio-only telephone. The Department may determine different
16 reimbursement amounts for different types of services and may modify the
17 rates that will apply in different plan years as appropriate but shall finalize its
18 determinations not later than April 1 for plan years after 2022.

19 Sec. 8. TELEPHONE TRIAGE SERVICES; DEPARTMENT OF
20 FINANCIAL REGULATION; EMERGENCY RULEMAKING

1 Notwithstanding any provision of 3 V.S.A. § 844 to the contrary, the
2 Department of Financial Regulation shall consider adopting, and shall have the
3 authority to adopt, emergency rules to address health insurance coverage of
4 and reimbursement for telephone calls used to determine whether an office
5 visit or other service is needed. Emergency rules adopted pursuant to this
6 section shall remain in effect until not later than April 1, 2022.

7 Sec. 9. 8 V.S.A. § 4100k(a)(2) is amended to read:

8 (2)(A) A health insurance plan shall provide the same reimbursement
9 rate for services billed using equivalent procedure codes and modifiers, subject
10 to the terms of the health insurance plan and provider contract, regardless of
11 whether the service was provided through an in-person visit with the health
12 care provider or through telemedicine.

13 (B) The provisions of subdivision (A) of this subdivision (2) shall
14 not apply:

15 (i) to services provided pursuant to the health insurance plan's
16 contract with a third-party telemedicine vendor to provide health care or dental
17 services; or

18 (ii) in the event that a health insurer and health care provider enter
19 into a value-based contract for health care services that include care delivered
20 through telemedicine or by store-and-forward means.

21 Sec. 10. 18 V.S.A. § 9721 is amended to read:

1 § 9721. ADVANCE DIRECTIVES; COVID-19 STATE OF EMERGENCY;
2 REMOTE WITNESSES AND EXPLAINERS

3 * * *

4 (c)(1) Notwithstanding any provision of subsection 9703(b) of this title to
5 the contrary, an advance directive executed by a principal between June 15,
6 2020 and June 30, ~~2021~~ 2022 shall be deemed to be valid even if the principal
7 signed the advance directive outside the physical presence of one or both of
8 the required witnesses, provided all of the following conditions are met with
9 respect to each remote witness:

10 * * *

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 June 30, ~~2021~~ 2022 while the principal was being
14 admitted to or was a resident of a nursing home or residential care facility or
15 was being admitted to or was a patient in a hospital shall be deemed to be valid
16 even if the individual who explained the nature and effect of the advance
17 directive to the principal in accordance with subsection 9703(d) or (e) of this
18 title, as applicable, was not physically present in the same location as the
19 principal at the time of the explanation, provided the individual delivering the
20 explanation was communicating with the principal by video or telephone.

21 * * *

1 Sec. 11. 18 V.S.A. § 1129 is amended to read:

2 § 1129. IMMUNIZATION REGISTRY

3 (a) A health care provider shall report to the Department all data regarding
4 immunizations of adults and of children under 18 years of age within seven
5 days of the immunization, provided that required reporting of immunizations
6 of adults shall commence within one month after the health care provider has
7 established an electronic health records system and data interface pursuant to
8 the e-health standards developed by the Vermont Information Technology
9 Leaders. A health insurer shall report to the Department all data regarding
10 immunizations of adults and of children under 18 years of age at least
11 quarterly. All data required pursuant to this subsection shall be reported in a
12 format required by the Department.

13 (b) The Department may use the data to create a registry of immunizations.
14 Registry information shall remain confidential and privileged, except as
15 provided in subsections (c) and (d) of this section. Registry information
16 regarding a particular adult shall be provided, upon request, to the adult, the
17 adult's health care provider, and the adult's health insurer. Registry
18 information regarding a particular minor child may be provided, upon request,
19 to school nurses, or in the absence of a nurse on staff, administrators, and upon
20 request and with written parental consent, to licensed day care providers, to
21 document compliance with Vermont immunization laws. Registry information

1 regarding a particular child shall be provided, upon request to the minor
2 child's parent or guardian, health insurer, and health care provider, or to the
3 child after the child reaches the age of majority.

4 (c) The Department may exchange confidential registry information with
5 the immunization registries of other states in order to obtain comprehensive
6 immunization records.

7 (d) The Department may provide confidential registry information to
8 health care provider networks serving Vermont patients, to the Vermont Health
9 Information Exchange, and, with the approval of the Commissioner, to
10 researchers who present evidence of approval from an institutional review
11 board in accordance with 45 C.F.R. § 164.512.

12 (e) Prior to releasing confidential information pursuant to subsections (c)
13 and (d) of this section, the Commissioner shall obtain from State registries,
14 health care provider networks, the Vermont Health Information Exchange, and
15 researchers a written agreement to keep any identifying information
16 confidential and privileged.

17 * * *

18 Sec. 12. EFFECTIVE DATE

19 This act shall take effect on passage.