

House Calendar

Tuesday, January 25, 2022

22nd DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

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NOTICE CALENDAR

Favorable with Amendment

H. 654

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

Rep. Houghton of Essex, for the Committee on Health Care, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

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, and 2021 Acts and Resolves No. 69, Sec. 19, is further amended to read:

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

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

Through March 31, ~~2022~~ 2023, the Agency of Human Services shall consider modifying existing rules or adopting emergency rules to protect access to health care services, long-term services and supports, and other human services under the Agency's jurisdiction. In modifying or adopting rules, the Agency shall consider the importance of the financial viability of providers that rely on funding from the State, federal government, or Medicaid, or a combination of these, for a major portion of their revenue.

* * *

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

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

In order to protect employees of a health care facility or human service provider who are not licensed health care professionals from the risks associated with COVID-19, through March 31, ~~2022~~ 2023, all health care facilities and human service providers in Vermont, including hospitals, federally qualified health centers, rural health clinics, residential treatment programs, homeless shelters, home- and community-based service providers, and long-term care facilities, shall follow State and federal public health

guidance from the Vermont Department of Health regarding measures to address employee safety, to the extent feasible.

* * * 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, 2022 2023, 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, during a declared state of emergency in Vermont as a result of COVID-19 and for a period of six months following the termination of the state of emergency through March 31, 2023, 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, ~~2022~~ 2023, 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.

* * *

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, ~~2022~~ 2023, 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, ~~2022~~ 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, ~~2022~~ 2023.

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

* * *

Sec. 9. PRESCRIPTION DRUGS; MAINTENANCE MEDICATIONS;

EARLY REFILLS

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

(b) Through March 31, ~~2022~~ 2023, all health insurance plans and Vermont Medicaid shall allow their members to refill prescriptions for chronic maintenance medications early to enable the members to maintain a 30-day supply of each prescribed maintenance medication at home.

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

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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, ~~2022~~ 2023, 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 shall be deemed to be licensed, certified, or registered to provide health care services, including mental health services, to a patient located in Vermont ~~using telehealth~~; 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, 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, ~~2022~~ 2023, provided the health care professional remains licensed, certified, or registered in good standing.

(2) The Board of Medical Practice and Office of Professional Regulation shall provide appropriate notice of the March 31, ~~2022~~ 2023 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.

Sec. 18. INACTIVE LICENSEES; BOARD OF MEDICAL PRACTICE;

OFFICE OF PROFESSIONAL REGULATION

(a)(1) Through March 31, ~~2022~~ 2023, a former health care professional, including a mental health professional, whose Vermont license, certificate, or registration became inactive not more than three years earlier and was in good standing at the time it became inactive may provide health care services, including mental health services, to a patient located in Vermont using telehealth; 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 after submitting, or having submitted on the individual's behalf, to the Board of Medical Practice or Office of Professional Regulation, as applicable, the individual's name, contact information, and the location or locations at which the individual will be practicing.

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

(3) The Board of Medical Practice and Office of Professional Regulation shall provide appropriate notice of the March 31, ~~2022~~ 2023 expiration date of this section to:

(A) health care professionals providing health care services 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.

(b) Through March 31, ~~2022~~ 2023, the Board of Medical Practice and the Office of Professional Regulation may permit former health care professionals, including mental health professionals, whose Vermont license, certificate, or registration became inactive more than three but less than 10 years earlier and was in good standing at the time it became inactive to return to the health care workforce on a temporary basis to provide health care services, including mental health services, to patients in Vermont. The Board of Medical Practice and Office of Professional Regulation may issue temporary licenses to these individuals at no charge and may impose limitations on the scope of practice of returning health care professionals as the Board or Office deems appropriate.

* * *

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

(a)(1) Through March 31, ~~2022~~ 2023, if the Director of Professional Regulation finds that a regulatory body attached to the Office of Professional Regulation by 3 V.S.A. § 122 cannot reasonably, safely, and expeditiously convene a quorum to transact business, the Director may exercise the full powers and authorities of that regulatory body, including disciplinary authority.

(2) Through March 31, ~~2022~~ 2023, if the Executive Director of the Board of Medical Practice finds that the Board cannot reasonably, safely, and expeditiously convene a quorum to transact business, the Executive Director may exercise the full powers and authorities of the Board, including disciplinary authority.

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

(c)(1) A record of the actions of the Director of the Office of Professional Regulation taken pursuant to the authority granted by this section shall be

published conspicuously on the website of the regulatory body on whose behalf the Director took the action.

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

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

Through March 31, ~~2022~~ 2023, the Director of Professional Regulation and the Commissioner of Health may issue such orders governing regulated professional activities and practices as may be necessary to protect the public health, safety, and welfare. If the Director or Commissioner finds that a professional practice, act, offering, therapy, or procedure by persons licensed or required to be licensed by Title 26 of the Vermont Statutes Annotated is exploitative, deceptive, or detrimental to the public health, safety, or welfare, or a combination of these, the Director or Commissioner may issue an order to cease and desist from the applicable activity, which, after reasonable efforts to publicize or serve the order on the affected persons, shall be binding upon all persons licensed or required to be licensed by Title 26 of the Vermont Statutes Annotated, and a violation of the order shall subject the person or persons to professional discipline, may be a basis for injunction by the Superior Court, and shall be deemed a violation of 3 V.S.A. § 127.

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* * * Telehealth * * *

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

(a) Notwithstanding any provision of 8 V.S.A. § 4100k or 18 V.S.A. § 9361 to the contrary, through March 31, ~~2022~~ 2023, 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; and

(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.

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

* * *

Sec. 2. 2020 Acts and Resolves No. 140, Sec. 15, as amended by 2021 Acts and Resolves No. 6, 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, ~~2022~~ 2023 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, ~~2022~~ 2023, provided the licensee remains in good standing.

(b) Through March 31, ~~2022~~ 2023, 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, 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, ~~2022~~ 2023.

Sec. 4. 2021 Acts and Resolves No. 6, Sec. 8 is amended to read:

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

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 health insurance coverage of and reimbursement for telephone calls used to determine whether an office visit or other service is needed. Emergency rules adopted pursuant to this section shall remain in effect until not later than April 1, ~~2022~~ 2023.

Sec. 5. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
MEDICAL PRACTICE; OUT-OF-STATE HEALTH CARE
PROFESSIONALS THROUGH MARCH 31, 2022

(a) Notwithstanding any provision of Vermont's professional licensure statutes or rules to the contrary, through March 31, 2022, a health care professional who holds a valid license, certificate, or registration to provide health care services in any other U.S. jurisdiction shall be deemed to be licensed, certified, or registered to provide health care services to a patient located in Vermont using telehealth, 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 delivers health care services to a patient located in Vermont using telehealth 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.

(c) This section shall remain in effect through March 31, 2022, provided the health care professional remains licensed, certified, or registered in good standing. Beginning on April 1, 2022 and continuing through June 30, 2023, an out-of-state health care professional shall register with the Office of Professional Regulation or Board of Medical Practice, as applicable, in accordance with Sec. 6 of this act in order to provide or to continue to provide health care services to one or more patients located in Vermont.

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

Notwithstanding any provision of Vermont's professional licensure statutes or rules to the contrary, from the period from 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.

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 10-0-1)

Constitutional Proposal

Prop 2 Declaration of rights; clarifying the prohibition on slavery and indentured servitude

First Day on the Notice Calendar

Rep. Colston of Winooski for Government Operations.

PROPOSAL 2

Sec. 1. HISTORY; PURPOSE

(a) History. While Vermont was the first state to include a prohibition on slavery in its Constitution in 1777, it was only a partial prohibition, applicable to adults reaching a certain age, “unless bound by the person’s own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like.” The 13th Amendment to the U.S. Constitution, ratified in 1865, prohibited slavery within the United States “except as a punishment for crime whereof the party shall have been duly convicted[.]” Despite subsequent revisions to it, the Vermont Constitution continues to contain only a partial prohibition on slavery.

(b) Purpose. This proposal would amend the Constitution of the State of Vermont to eliminate reference to slavery. Eliminating reference to slavery in the Vermont Constitution will serve as a foundation for addressing systemic racism in our State’s laws and institutions.

Sec. 2. Article 1 of Chapter I of the Vermont Constitution is amended to read:
Article 1. [All persons born free; their natural rights; ~~slavery prohibited~~]

~~That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; therefore no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like.~~

Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2022 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

Public Hearings

Public Hearing on PR 5- Proposed Amendment to the Constitution of the State of Vermont - Subject: Right to personal reproductive freedom - Hearing to be held in House Chamber on January 26, 2022 from 6:00 PM to 8:00 PM-
Hearing held by House Committee on Human Services

Information Notice

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(b)(3)(D):

JFO #3085 – Two (2) limited-service positions to the VT Department of Disabilities, Aging and Independent Living, Division of Vocational Rehabilitation from the Centers for Medicare and Medicaid Services. One (1) VR Program Coordinator to oversee at statewide scholarship, and mentor program for personal care attendants. One (1) VR Assistive Technology Specialist for vocational rehabilitation clients including transition age youth (high school students). Both positions funded through 9/30/2025 by previously approved grant JFO #2510.

[Received January 4, 2022]

JFO #3086 – \$925,840 to the VT Agency of Education from the U.S. Department of Agriculture Food and Nutrition Services. The grant will be used to fund two projects: Phase II of a current IT systems upgrade to improve interconnectivity and data transfer functionalities of the system; and a pilot of the Ed-Fi data model to explore improvements for data transfers between local education agencies, child nutrition programs and other state agencies. Ed-Fi is a national data standard in education. Please see this link for more information on the data system: <https://www.ed-fi.org/>.

[Received January 4, 2022]