

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Health Care to which was referred House Bill No. 654
3 entitled “An act relating to extending COVID-19 health care regulatory
4 flexibility” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 2020 Acts and Resolves No. 91, as amended by 2020 Acts and
8 Resolves No. 140, Sec. 13, 2020 Acts and Resolves No. 159, Sec. 10, 2021
9 Acts and Resolves No. 6, Secs. 1 and 3, and 2021 Acts and Resolves No. 69,
10 Sec. 19, is further amended to read:

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

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

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

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* * * 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

1 patient care, support children and families who receive benefits and services
2 through the Department for Children and Families, and allow for continuation
3 of operations with a reduced workforce and with flexible staffing arrangements
4 that are responsive to evolving needs, to the extent such waivers or variances
5 are permitted under federal law:

- 6 (1) Hospital Licensing Rule;
- 7 (2) Hospital Reporting Rule;
- 8 (3) Nursing Home Licensing and Operating Rule;
- 9 (4) Home Health Agency Designation and Operation Regulations;
- 10 (5) Residential Care Home Licensing Regulations;
- 11 (6) Assisted Living Residence Licensing Regulations;
- 12 (7) Home for the Terminally Ill Licensing Regulations;
- 13 (8) Standards for Adult Day Services;
- 14 (9) Therapeutic Community Residences Licensing Regulations;
- 15 (10) Choices for Care High/Highest Manual;
- 16 (11) Designated and Specialized Service Agency designation and
17 provider rules;
- 18 (12) Child Care Licensing Regulations;
- 19 (13) Public Assistance Program Regulations;
- 20 (14) Foster Care and Residential Program Regulations; and

1 (15) other rules and standards for which the Agency of Human Services
2 is the adopting authority under 3 V.S.A. chapter 25.

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

5 (a) Notwithstanding any provision of 18 V.S.A. chapter 220 or 221, 8
6 V.S.A. § 4062, 33 V.S.A. chapter 18, subchapter 1, or the Green Mountain
7 Care Board’s administrative rules, guidance, or standards to the contrary,
8 ~~during a declared state of emergency in Vermont as a result of COVID-19 and~~
9 ~~for a period of six months following the termination of the state of emergency~~
10 through March 31, 2023, the Green Mountain Care Board may waive or permit
11 variances from State laws, guidance, and standards with respect to the
12 following regulatory activities, to the extent permitted under federal law, as
13 necessary to prioritize and maximize direct patient care, safeguard the stability
14 of health care providers, and allow for orderly regulatory processes that are
15 responsive to evolving needs related to the COVID-19 pandemic:

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

20 (b) As part of any proceeding conducted on or after February 1, 2022 to
21 establish or enforce a hospital’s fiscal year 2022 or 2023 budget, the Green

1 Mountain Care Board shall consider the hospital’s extraordinary labor costs
2 and investments, as well as the impacts of those costs and investments on the
3 affordability of health care.

4 Sec. 6. MEDICAID AND HEALTH INSURERS; PROVIDER

5 ENROLLMENT AND CREDENTIALING

6 Until March 31, ~~2022~~ 2023, and to the extent permitted under federal law,
7 the Department of Vermont Health Access shall relax provider enrollment
8 requirements for the Medicaid program, and the Department of Financial
9 Regulation shall direct health insurers to relax provider credentialing
10 requirements for health insurance plans, in order to allow for individual health
11 care providers to deliver and be reimbursed for services provided across health
12 care settings as needed to respond to Vermonters’ evolving health care needs.

13 * * *

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

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

19 (b)(1) Until April 1, ~~2022~~ 2023, and notwithstanding any provision of
20 3 V.S.A. § 844 to the contrary, the Department of Financial Regulation shall

1 consider adopting, and shall have the authority to adopt, emergency rules to
2 address the following through March 31, ~~2022~~ 2023:

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

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

13 (2) Any rules adopted in accordance with this subsection shall remain in
14 effect until not later than April 1, ~~2022~~ 2023.

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

16 * * *

17 Sec. 9. PRESCRIPTION DRUGS; MAINTENANCE MEDICATIONS;

18 EARLY REFILLS

19 (a) As used in this section, “health insurance plan” means any health
20 insurance policy or health benefit plan offered by a health insurer, as defined in

1 18 V.S.A. § 9402. The term does not include policies or plans providing
2 coverage for a specified disease or other limited benefit coverage.

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

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

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12 * * * Regulation of Professions * * *

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14 Sec. 17. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
15 MEDICAL PRACTICE; OUT-OF-STATE HEALTH CARE
16 PROFESSIONALS

17 (a) Notwithstanding any provision of Vermont’s professional licensure
18 statutes or rules to the contrary, through March 31, ~~2022~~ 2023, a health care
19 professional, including a mental health professional, who holds a valid license,
20 certificate, or registration to provide health care services in any other U.S.
21 jurisdiction shall be deemed to be licensed, certified, or registered to provide

1 health care services, including mental health services, to a patient located in
2 Vermont ~~using telehealth~~; as a volunteer member of the Medical Reserve
3 Corps; or as part of the staff of a licensed facility, other health care facility as
4 defined in 18 V.S.A. § 9432, or federally qualified health center, provided the
5 health care professional:

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

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

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

13 (b) A health care professional who plans to provide health care services in
14 Vermont as a volunteer member of the Medical Reserve Corps or as part of the
15 staff of a licensed facility, other health care facility as defined in 18 V.S.A.
16 § 9432, or federally qualified health center shall submit or have submitted on
17 the individual's behalf the individual's name, contact information, and the
18 location or locations at which the individual will be practicing to:

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

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

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

8 (d)(1) This section shall remain in effect through March 31, ~~2022~~ 2023,
9 provided the health care professional remains licensed, certified, or registered
10 in good standing.

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

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

16 (B) the Medical Reserve Corps; and

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

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

1 Sec. 18. INACTIVE LICENSEES; BOARD OF MEDICAL PRACTICE;
2 OFFICE OF PROFESSIONAL REGULATION

3 (a)(1) Through March 31, ~~2022~~ 2023, a former health care professional,
4 including a mental health professional, whose Vermont license, certificate, or
5 registration became inactive not more than three years earlier and was in good
6 standing at the time it became inactive may provide health care services,
7 including mental health services, to a patient located in Vermont using
8 telehealth; as a volunteer member of the Medical Reserve Corps; or as part of
9 the staff of a licensed facility, other health care facility as defined in 18 V.S.A.
10 § 9432, or federally qualified health center after submitting, or having
11 submitted on the individual’s behalf, to the Board of Medical Practice or
12 Office of Professional Regulation, as applicable, the individual’s name, contact
13 information, and the location or locations at which the individual will be
14 practicing.

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

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

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

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

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

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

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

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

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

7 Through March 31, ~~2022~~ 2023, the Director of Professional Regulation and
8 the Commissioner of Health may issue such orders governing regulated
9 professional activities and practices as may be necessary to protect the public
10 health, safety, and welfare. If the Director or Commissioner finds that a
11 professional practice, act, offering, therapy, or procedure by persons licensed
12 or required to be licensed by Title 26 of the Vermont Statutes Annotated is
13 exploitative, deceptive, or detrimental to the public health, safety, or welfare,
14 or a combination of these, the Director or Commissioner may issue an order to
15 cease and desist from the applicable activity, which, after reasonable efforts to
16 publicize or serve the order on the affected persons, shall be binding upon all
17 persons licensed or required to be licensed by Title 26 of the Vermont Statutes
18 Annotated, and a violation of the order shall subject the person or persons to
19 professional discipline, may be a basis for injunction by the Superior Court,
20 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

1 Vermont as a result of COVID-19, a health care provider shall not be required
2 to obtain and document a patient’s oral or written informed consent for the use
3 of telemedicine or store-and-forward technology prior to delivering services to
4 the patient in accordance with 18 V.S.A. § 9361(c), if obtaining or
5 documenting such consent, or both, is not practicable under the circumstances.

6 * * *

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

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

12 (a) Notwithstanding any provision of 26 V.S.A. § 1353(11) to the contrary,
13 the Board of Medical Practice or its Executive Director may issue a temporary
14 license through March 31, ~~2022~~ 2023 to an individual who is licensed to
15 practice as a physician, physician assistant, or podiatrist in another jurisdiction,
16 whose license is in good standing, and who is not subject to disciplinary
17 proceedings in any other jurisdiction. The temporary license shall authorize
18 the holder to practice in Vermont until a date not later than April 1, ~~2022~~ 2023,
19 provided the licensee remains in good standing.

20 (b) Through March 31, ~~2022~~ 2023, the Board of Medical Practice or its
21 Executive Director may waive requirements for physician assistants, including

1 scope of practice requirements and the requirement for documentation of the
2 relationship between a physician assistant and a physician pursuant to
3 26 V.S.A. § 1735a. The Board or Executive Director may impose limitations
4 or conditions when granting a waiver under this subsection.

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

7 Sec. 12a. SUNSET OF PHARMACIST AUTHORITY TO ORDER OR
8 ADMINISTER SARS-COV TESTS

9 In Sec. 11, 26 V.S.A. § 2023(b)(2)(A)(x) (clinical pharmacy prescribing;
10 State protocol; SARS-CoV testing) shall be repealed on March 31, ~~2022~~ 2023.

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

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

14 Notwithstanding any provision of 3 V.S.A. § 844 to the contrary, the
15 Department of Financial Regulation shall consider adopting, and shall have the
16 authority to adopt, emergency rules to address health insurance coverage of
17 and reimbursement for telephone calls used to determine whether an office
18 visit or other service is needed. Emergency rules adopted pursuant to this
19 section shall remain in effect until not later than April 1, ~~2022~~ 2023.

20 Sec. 5. TEMPORARY TELEHEALTH REGISTRATION FOR OUT-OF-
21 STATE HEALTH CARE PROFESSIONALS

1 Notwithstanding any provision of Vermont’s professional licensure statutes
2 or rules to the contrary, for the period from April 1, 2022 through June 30,
3 2023, the Office of Professional Regulation and Board of Medical Practice
4 shall register a health care professional who is not licensed or registered to
5 practice in Vermont but who seeks to provide health care services to patients or
6 clients located in Vermont using telehealth, provided:

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

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

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

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

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1 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE