

S.117: Section-by-section summary as passed by Senate
An act relating to extending health care regulatory flexibility during and after the COVID-19 pandemic and to coverage of health care services delivered by audio-only telephone

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Secs. 1-3. Extension of certain Act 91/Act 140 provisions

These sections extend through March 31, 2022 certain COVID-19-related flexibility provisions originally enacted in Act 91 of 2020 and extended in Act 140 of 2020:

- Agency of Human Services' (AHS) consideration of modifying existing rules or adopting emergency rules to protect access to services
- Protections for employees of health care facilities and human service providers
- Authority for AHS Secretary to waive or allow variances from rules and standards governing providers of health care and human services
- Flexibility in provider credentialing requirements from Medicaid and health insurers
- Early refills of maintenance medications
- Buprenorphine prescription renewals without an office visit
- Authority for AHS to pay long-term care facilities for bed-hold days
- Ability for out-of-state licensed health care professionals and recently retired/inactive Vermont licensees to provide services in Vermont by telehealth, as volunteer member of Medical Reserve Corps, and on staff of licensed facility or federally qualified health center (FQHC)
 - Bill adds Medical Reserve Corps and FQHC provisions and requires licensing boards to provide appropriate notice before March 31, 2022 expiration of deemed licensure
- Emergency authority for Director of Office of Professional Regulation (OPR) and Executive Director of Board of Medical Practice (BMP) to act for their boards
- Authority for OPR Director and Commissioner of Health to issue emergency regulatory orders to protect public health, safety, and welfare
- Ability to waive HIPAA-compliant-connection requirements for telemedicine, to extent permitted by federal law
 - Bill would sunset flexibility for providers not to obtain/document a patient's informed consent for use of telemedicine if not practicable under the circumstances – sunset would be 60 days after end of declared state of emergency
- Authority for BMP to issue temporary licenses to out-of-state providers and waive certain requirements for physician assistants (Sec. 2)
- Sunset on pharmacists' authority to order and administer COVID tests (Sec. 2a)
- Authority for Department of Financial Regulation (DFR) to adopt emergency rules regarding health insurance coverage and cost-sharing requirements for diagnosis, treatment, and prevention of COVID-19 and regarding prescription drug deductible requirements (Sec. 3)

Sec. 4. Coverage of health care services delivered by audio-only telephone

- Requires health insurance plans, and Medicaid to the extent permitted by the Centers for Medicare and Medicaid Services (CMS), to cover all medically necessary, clinically appropriate health care services delivered by audio-only telephone to the same extent they would cover the services if provided in person

- Allows cost-sharing (deductible, co-payment, coinsurance) that does not exceed the cost-sharing required for in-person visit
- Prohibits plans from requiring a provider to have an existing relationship with a patient in order to be reimbursed for services delivered by audio-only telephone

Sec. 5. Health care providers delivering services by audio-only telephone

- Allows health care providers to deliver services by audio-only telephone if patient chooses to receive services in this manner and it is clinically appropriate to do so
- Provider must document in patient's medical record:
 - Patient's informed consent for audio-only telephone services
 - Reasons provider determined audio-only telephone services were clinically appropriate
- Provider cannot require patient to receive services by audio-only telephone if patient does not wish to receive services in this manner
- Informed consent – must include:
 - That patient is entitled to choose to receive services by audio-only telephone, in person, or by telemedicine, to extent clinically appropriate
 - That receiving services by audio-only telephone does not preclude patient from later receiving services in person or by telemedicine
 - Explanation of pros and cons of delivering and receiving services by telephone
 - Informing patient of anyone else who will be listening to/participating in visit and getting patient's permission
 - Whether services will be billed to patient's health insurance plan and what it might mean for patient's out-of-pocket responsibility
 - Informing patient that not all audio-only services are covered by all health plans
- For ongoing audio-only telephone services, consent for audio-only required only at first episode of care
- Neither patient nor provider can record the telephone consultation
- Audio-only telephone services cannot be used for psychiatric examinations related to involuntary commitments

Sec. 6. Audio-only telephone; medical billing; data collection; report

- By July 1, 2021, DFR, in consultation with stakeholders, must determine appropriate codes and modifiers to be used by providers and insurers starting on or before January 1, 2022 in billing and payment for health care services delivered by audio-only telephone
- By December 1, 2023, DFR and others must present information to legislative committees regarding use of audio-only telephone services during 2022, including utilization, quality of care, patient satisfaction, impacts on costs and access, and how to incorporate these services into value-based payments

Sec. 7. Audio-only telephone reimbursement amounts for plan years 2022-2024

- DFR, in consultation with stakeholders, must determine amounts for health insurance plans to reimburse providers for delivering services by audio-only telephone during plan years 2022, 2023, and 2024

Sec. 8. DFR emergency rulemaking on telephone triage services

- Allows DFR to adopt emergency rules on health insurance coverage for and reimbursement of telephone calls used to determine whether an office visit or other service is needed; emergency rules could remain in effect through March 31, 2022

Sec. 9. Exception to reimbursement parity for telemedicine

- Provides exception to existing reimbursement parity requirement for telemedicine if the insurer and provider have entered into a value-based contract for health care services that includes telemedicine

Sec. 10. Remote witnesses and explainers for advance directives

- Extends for an additional year, through June 30, 2022, provisions allowing for variations from the usual statutory witnessing requirements for advance directives executed during the COVID-19 pandemic

Sec. 11. Immunization registry information to Vermont Health Information Exchange

- Allows Department of Health to provide confidential information from the State's immunization registry to the Vermont Health Information Exchange (VHIE); it would require the Commissioner to obtain a written confidentiality agreement from the VHIE prior to releasing any confidential information