

1 Introduced by Senator Lyons

2 Referred to Committee on

3 Date:

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

5 Statement of purpose of bill as introduced: This bill proposes to extend certain
6 provisions of 2020 Acts and Resolves Nos. 91 and 140 allowing for health
7 care-related regulatory flexibility during and immediately following the
8 COVID-19 pandemic. It would also authorize the Department of Financial
9 Regulation to adopt rules expanding patients' access to and providers'
10 reimbursement for health care services delivered by telephone until January 1,
11 2024.

12 An act relating to extending health care regulatory flexibility during and
13 after the COVID-19 pandemic

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

15 Sec. 1. 2020 Acts and Resolves No. 91, as amended by 2020 Acts and

16 Resolves No. 140, Sec. 13, is further amended to read:

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

18 Sec. 1. AGENCY OF HUMAN SERVICES; HEALTH CARE AND

19 HUMAN SERVICE PROVIDER SUSTAINABILITY

1 programs, homeless shelters, home- and community-based service providers,
2 and long-term care facilities, shall follow guidance from the Vermont
3 Department of Health regarding measures to address employee safety, to the
4 extent feasible.

5 * * * Compliance Flexibility * * *

6 Sec. 4. HEALTH CARE AND HUMAN SERVICE PROVIDER

7 REGULATION; WAIVER OR VARIANCE PERMITTED

8 Notwithstanding any provision of the Agency of Human Services’
9 administrative rules or standards to the contrary, ~~through March 31, 2021~~
10 during a declared state of emergency in Vermont as a result of COVID-19 and
11 for a period of three months following the termination of the state of
12 emergency, the Secretary of Human Services may waive or permit variances
13 from 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 Until three months following the termination of the last to terminate of a
20 declared state of emergency in Vermont as a result of COVID-19, a declared
21 federal public health emergency as a result of COVID-19, and a declared

1 national emergency as a result of COVID-19, and to the extent permitted under
2 federal law, the Department of Vermont Health Access shall relax provider
3 enrollment requirements for the Medicaid program, and the Department of
4 Financial 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 * * *

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

10 Sec. 8. ACCESS TO HEALTH CARE SERVICES; DEPARTMENT OF
11 FINANCIAL REGULATION; EMERGENCY RULEMAKING

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

15 (b)(1) ~~Until July 1, 2021~~ During a declared state of emergency in Vermont
16 as a result of COVID-19 and for a period of three months following the
17 termination of the state of emergency, and notwithstanding any provision of
18 3 V.S.A. § 844 to the contrary, the Department of Financial Regulation shall
19 consider adopting, and shall have the authority to adopt, emergency rules to
20 address the following ~~through June 30, 2021~~:

1 ~~(1)~~(A) expanding health insurance coverage for, and waiving or limiting
2 cost-sharing requirements directly related to, COVID-19 diagnosis, treatment,
3 and prevention; and

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

8 (2) Any rules adopted in accordance with this subsection shall remain in
9 effect until not later than three months following the termination of the state of
10 emergency.

11 ~~(3)~~(c) The Department of Financial Regulation shall consider adopting,
12 and shall have the authority to adopt, rules expanding patients’ access to and
13 providers’ reimbursement for health care services, including preventive
14 services, consultation services, and services to new patients, delivered
15 remotely through telehealth, audio-only telephone, and brief
16 telecommunication services. Any rules adopted in accordance with this
17 subsection shall remain in effect until not later than January 1, 2024.

18 Sec. 9. PRESCRIPTION DRUGS; MAINTENANCE MEDICATIONS;

19 EARLY REFILLS

20 (a) As used in this section, “health insurance plan” means any health
21 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 June 30, 2021~~ During a declared state of emergency in
4 Vermont as a result of COVID-19 and for a period of three months following
5 the termination of the state of emergency, all health insurance plans and
6 Vermont Medicaid shall allow their members to refill prescriptions for chronic
7 maintenance medications early to enable the members to maintain a 30-day
8 supply of each prescribed maintenance medication at home.

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

13 Sec. 10. PHARMACISTS; CLINICAL PHARMACY; EXTENSION OF
14 PRESCRIPTION FOR MAINTENANCE MEDICATION

15 (a) ~~Through June 30, 2021~~ During a declared state of emergency in
16 Vermont as a result of COVID-19 and for a period of three months following
17 the termination of the state of emergency, a pharmacist may extend a previous
18 prescription for a maintenance medication for which the patient has no refills
19 remaining or for which the authorization for refills has recently expired if it is
20 not feasible to obtain a new prescription or refill authorization from the
21 prescriber.

1 (b) A pharmacist who extends a prescription for a maintenance medication
2 pursuant to this section shall take all reasonable measures to notify the
3 prescriber of the prescription extension in a timely manner.

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

8 Sec. 11. PHARMACISTS; CLINICAL PHARMACY; THERAPEUTIC
9 SUBSTITUTION DUE TO LACK OF AVAILABILITY

10 (a) ~~Through March 31, 2021~~ During a declared state of emergency in
11 Vermont as a result of COVID-19 and for a period of three months following
12 the termination of the state of emergency, a pharmacist may, with the informed
13 consent of the patient, substitute an available drug or insulin product for an
14 unavailable prescribed drug or insulin product in the same therapeutic class if
15 the available drug or insulin product would, in the clinical judgment of the
16 pharmacist, have substantially equivalent therapeutic effect even though it is
17 not a therapeutic equivalent.

18 (b) As soon as reasonably possible after substituting a drug or insulin
19 product pursuant to subsection (a) of this section, the pharmacist shall notify
20 the prescribing clinician of the drug or insulin product, dose, and quantity
21 actually dispensed to the patient.

1 state of emergency in Vermont as a result of COVID-19 and for a period of
2 three months following the termination of the state of emergency, a health care
3 professional, including a mental health professional, who holds a valid license,
4 certificate, or registration to provide health care services in any other U.S.
5 jurisdiction shall be deemed to be licensed, certified, or registered to provide
6 health care services, including mental health services, to a patient located in
7 Vermont using telehealth or as part of the staff of a licensed facility, provided
8 the health care professional:

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

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

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

16 (b) A health care professional who plans to provide health care services in
17 Vermont as part of the staff of a licensed facility shall submit or have
18 submitted on the individual's behalf the individual's name, contact
19 information, and the location or locations at which the individual will be
20 practicing to:

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

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

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

10 (d) This section shall remain in effect ~~through March 31, 2021, until three~~
11 months following the termination of the declared state of emergency in
12 Vermont as a result of COVID-19 and provided the health care professional
13 remains licensed, certified, or registered in good standing.

14 Sec. 18. RETIRED HEALTH CARE PROFESSIONALS; BOARD OF
15 MEDICAL PRACTICE; OFFICE OF PROFESSIONAL
16 REGULATION

17 (a)(1) ~~Through March 31, 2021~~ During a declared state of emergency in
18 Vermont as a result of COVID-19 and for a period of three months following
19 the termination of the state of emergency, a former health care professional,
20 including a mental health professional, who retired not more than three years
21 earlier with the individual’s Vermont license, certificate, or registration in

1 good standing may provide health care services, including mental health
2 services, to a patient located in Vermont using telehealth or as part of the staff
3 of a licensed facility after submitting, or having submitted on the individual’s
4 behalf, to the Board of Medical Practice or Office of Professional Regulation,
5 as applicable, the individual’s name, contact information, and the location or
6 locations at which the individual will be practicing.

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

11 (b) ~~Through March 31, 2021~~ During a declared state of emergency in
12 Vermont as a result of COVID-19 and for a period of three months following
13 the termination of the state of emergency, 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 more than
16 three but less than 10 years earlier with their Vermont license, certificate, or
17 registration in good standing to return to the health care workforce on a
18 temporary basis to provide health care services, including mental health
19 services, to patients in Vermont. The Board of Medical Practice and Office of
20 Professional Regulation may issue temporary licenses to these individuals at

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

3 * * *

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

7 (a)(1) ~~Through March 31, 2021~~ During a declared state of emergency in
8 Vermont as a result of COVID-19 and for a period of three months following
9 the termination of the state of emergency, if the Director of Professional
10 Regulation finds that a regulatory body attached to the Office of Professional
11 Regulation by 3 V.S.A. § 122 cannot reasonably, safely, and expeditiously
12 convene a quorum to transact business, the Director may exercise the full
13 powers and authorities of that regulatory body, including disciplinary
14 authority.

15 (2) ~~Through March 31, 2021~~ During a declared state of emergency in
16 Vermont as a result of COVID-19 and for a period of three months following
17 the termination of the state of emergency, if the Executive Director of the
18 Board of Medical Practice finds that the Board cannot reasonably, safely, and
19 expeditiously convene a quorum to transact business, the Executive Director
20 may exercise the full powers and authorities of the Board, including
21 disciplinary authority.

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

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

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

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

14 ~~Through March 31, 2021~~ During a declared state of emergency in Vermont
15 as a result of COVID-19 and for a period of three months following the
16 termination of the state of emergency, the Director of Professional Regulation
17 and the Commissioner of Health may issue such orders governing regulated
18 professional activities and practices as may be necessary to protect the public
19 health, safety, and welfare. If the Director or Commissioner finds that a
20 professional practice, act, offering, therapy, or procedure by persons licensed
21 or required to be licensed by Title 26 of the Vermont Statutes Annotated is

1 exploitative, deceptive, or detrimental to the public health, safety, or welfare,
2 or a combination of these, the Director or Commissioner may issue an order to
3 cease and desist from the applicable activity, which, after reasonable efforts to
4 publicize or serve the order on the affected persons, shall be binding upon all
5 persons licensed or required to be licensed by Title 26 of the Vermont Statutes
6 Annotated, and a violation of the order shall subject the person or persons to
7 professional discipline, may be a basis for injunction by the Superior Court,
8 and shall be deemed a violation of 3 V.S.A. § 127.

9 * * *

10 * * * Telehealth * * *

11 * * *

12 Sec. 26. WAIVER OF CERTAIN TELEHEALTH REQUIREMENTS
13 ~~FOR A LIMITED TIME~~ DURING AND AFTER STATE OF
14 EMERGENCY

15 Notwithstanding any provision of 8 V.S.A. § 4100k or 18 V.S.A. § 9361 to
16 the contrary, ~~through March 31, 2021~~ during a declared state of emergency in
17 Vermont as a result of COVID-19 and for a period of three months following
18 the termination of the state of emergency, the following provisions related to
19 the delivery of health care services through telemedicine or by store-and-
20 forward means shall not be required, to the extent their waiver is permitted by
21 federal law:

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

6 (2) representing to a patient that the health care services, including
7 dental services, will be delivered using a connection that complies with the
8 requirements of the Health Insurance Portability and Accountability Act of
9 1996, Pub. L. No. 104-191 in accordance with 18 V.S.A. § 9361(c), if it is not
10 practicable to use such a connection under the circumstances; and

11 (3) obtaining and documenting a patient’s oral or written informed
12 consent for the use of telemedicine or store-and-forward technology prior to
13 delivering services to the patient in accordance with 18 V.S.A. § 9361(c), if
14 obtaining or documenting such consent, or both, is not practicable under the
15 circumstances.

16 * * *

17 Sec. 2. 2020 Acts and Resolves No. 140, Sec. 14 is amended to read:

18 Sec. 14. OFFICE OF PROFESSIONAL REGULATION; TEMPORARY
19 LICENSURE

20 Notwithstanding any provision of 3 V.S.A. § 129(a)(10) to the contrary,
21 ~~through March 31, 2021~~ during a declared state of emergency in Vermont as a

1 result of COVID-19 and for a period of three months following the termination
2 of the state of emergency, a board or profession attached to the Office of
3 Professional Regulation may issue a temporary license to an individual who is
4 a graduate of an approved education program if the licensing examination
5 required for the individual’s profession is not reasonably available.

6 Sec. 3. 2020 Acts and Resolves No. 140, Sec. 15 is amended to read:

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

10 (a) Notwithstanding any provision of 26 V.S.A. § 1353(11) to the contrary,
11 the Board of Medical Practice or its Executive Director may issue a temporary
12 license ~~through March 31, 2021~~ during a declared state of emergency in
13 Vermont as a result of COVID-19 and for a period of three months following
14 the termination of the state of emergency 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, 2021~~ three
19 months following the dates of the termination of the state of emergency,
20 provided the licensee remains in good standing.

1 (b) ~~Through March 31, 2021~~ During a declared state of emergency in
2 Vermont as a result of COVID-19 and for a period of three months following
3 the termination of the state of emergency, the Board of Medical Practice or its
4 Executive Director may waive supervision and scope of practice requirements
5 for physician assistants, including the requirement for documentation of the
6 relationship between a physician assistant and a physician pursuant to
7 26 V.S.A. § 1735a. The Board or Executive Director may impose limitations
8 or conditions when granting a waiver under this subsection.

9 Sec. 4. EFFECTIVE DATE

10 This act shall take effect on passage.