

## Emergency Filing - Coversheet

**Instructions:**

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the "Rule on Rulemaking" (CVR 04-000-001) adopted by the Office of the Secretary of State, this emergency filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, the Legislative Committee on Administrative Rules and a copy with the Chair of the Interagency Committee on Administrative Rules.

All forms shall be submitted to the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of "Proposed Rule Postings" online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

This emergency rule may remain in effect for a total of 180 days from the date it first takes effect.

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801(b)(11) for a definition), I believe there exists an imminent peril to public health, safety or welfare, requiring the adoption of this emergency rule.

The nature of the peril is as follows (*PLEASE USE ADDITIONAL SHEETS IF SPACE IS INSUFFICIENT*). The nature of the peril is the continuing COVID-19 public health emergency (PHE) declared by Secretary of Health and Human Services Alex M. Azar on January 31, 2020. Please see also the Department's answer in paragraph 9.

I approve the contents of this filing entitled:

Access to Health Care Services Related to COVID-19

/s/ Michael S. Pieciak

(signature)

, on 3/31/2022

(date)

Printed Name and Title:

Michael S. Pieciak, Commissioner of Financial Regulation

RECEIVED BY: \_\_\_\_\_

- ☐ Coversheet
- ☐ Adopting Page
- ☐ Economic Impact Analysis
- ☐ Environmental Impact Analysis
- ☐ Strategy for Maximizing Public Input
- ☐ Scientific Information Statement (if applicable)
- ☐ Incorporated by Reference Statement (if applicable)
- ☐ Clean text of the rule (Amended text without annotation)
- ☐ Annotated text (Clearly marking changes from previous rule)



1. TITLE OF RULE FILING:

Access to Health Care Services Related to COVID-19

2. ADOPTING AGENCY:

Department of Financial Regulation

3. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Sebastian Arduengo

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Montpelier, VT 05620 -  
3101

Telephone: 802 828 - 4846 Fax: 802 828 - 5593

E-Mail: Sebastian.Arduengo@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-public-comment>

4. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Gavin Boyles

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Montpelier, VT 05620 -  
3101

Telephone: 802 272 - 2338 Fax: 802 828 - 1919

E-Mail:

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

The Rule does not include a records exemption.

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

The Rule does not include a records exemption.

6. LEGAL AUTHORITY / ENABLING LEGISLATION:



*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

This rule is issued under the authority vested in the Commissioner of Financial Regulation by Act 6 of 2021, section 8, as amended by Act 85 of 2022, section 4.

**7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:**

Act 6 of 2021, section 8, requires the Commissioner to consider adopting and gives the Commissioner authority to adopt emergency rules to:

(1) expand health insurance coverage for, and waive or limit cost-sharing requirements directly related to, COVID-19 diagnosis, treatment, and prevention; and

(2) suspend 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.

As amended by Act 85 of 2022, Act 6 further gives the Commissioner authority to adopt the emergency rule until March 31, 2023 notwithstanding the requirements of the Vermont Administrative Procedures Act.

**8. CONCISE SUMMARY (150 WORDS OR LESS):**

The emergency rule requires health insurers to provide continuing coverage of COVID-19 diagnosis, testing (including rapid antigen testing), and treatment without member cost-sharing.

**9. EXPLANATION OF WHY THE RULE IS NECESSARY:**

A continued emergency rule regarding COVID-19 diagnosis, testing, and treatment is necessary because as of March 30, 2022, the Vermont Department of Health continues to report over 200 new cases of COVID-19 per day in the state, with a 7-day test positivity average above 5%. Moreover, the World Health Organization reports that a new sub-variant of the Omicron variant,

dubbed "BA.2" now represents over 80% of sequenced cases worldwide and could drive a new COVID-19 wave in the United States.

**10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY AS DEFINED IN 3 V.S.A. § 801(b)(13(A):**

The emergency rule is not arbitrary because required coverage of COVID-19 diagnosis, testing, and treatment is limited to claims in which COVID-19 or suspected exposure to COVID-19 is the primary diagnosis or services where insurance coverage is already required as a matter of federal law.

**11. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

The emergency rule primarily affects health insurers, pharmacy benefit managers, and members of health insurance plans.

**12. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):**

The Department anticipates that the emergency rule will provide substantial financial relief to Vermonters who still require access to COVID-19 testing and treatment. Vermont's regulated health insurers continue to be in a strong financial position, and the emergency rule is not expected to have a material effect on their solvency or ability to pay claims.

**13. A HEARING IS NOT SCHEDULED .**

**14. HEARING INFORMATION**

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):  
03/31/2022

16. EMERGENCY RULE EFFECTIVE: 04/01/2022

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL  
(A DATE NO LATER THAN 180 DAYS FOLLOWING ADOPTION OF THIS EMERGENCY RULE):  
03/31/2023

18. NOTICE OF THIS EMERGENCY RULE SHOULD NOT BE PUBLISHED IN  
THE WEEKLY NOTICES OF RULEMAKING IN THE NEWSPAPERS OF  
RECORD.

19. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE  
SEARCHABILITY OF THE RULE NOTICE ONLINE).

Health Insurance

COVID-19

Testing

Treatment

## Adopting Page

### Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

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1. TITLE OF RULE FILING:

Access to Health Care Services Related to COVID-19

2. ADOPTING AGENCY:

Department of Financial Regulation

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

The emergency rule supercedes the following emergency rules:

- 1) H-2020-01-E, SOS Log # 20-E01; Effective 03/10/20;



- 2) H-2021-01-E, SOS Log # 21-E08; Effective 07/01/21;
- 3) H-2021-02-E, SOS Log # 21-E21; Effective 12/08/21;



State of Vermont  
Agency of Administration  
Office of the Secretary  
Pavilion Office Building  
109 State Street, 5<sup>th</sup> Floor  
Montpelier, VT 05609-0201  
[www.aoa.vermont.gov](http://www.aoa.vermont.gov)

[phone] 802-828-3322  
[fax] 802-828-2428

*Kristin L. Clouser, Secretary*

## MEMORANDUM

**TO:** Jim Condos, Secretary of State  
**FROM:** Douglas Farnham, ICAR Chair Douglas Farnham  
**DATE:** April 1, 2022  
**RE:** Emergency Rule Titled 'Access to Health Care Services Related to COVID-19' by the Department of Financial Regulation

Digitally signed by  
Douglas Farnham  
Date: 2022.04.01  
08:19:06 -04'00'

The use of rulemaking procedures under the provisions of 3 V.S.A. §844 is appropriate for this rule. I have reviewed the proposed rule titled 'Access to Health Care Services Related to COVID-19', provided by the Department of Financial Regulation, and agree that emergency rulemaking is necessary.

###



## Economic Impact Analysis

### **Instructions:**

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify "No impact anticipated" in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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#### 1. TITLE OF RULE FILING:

Access to Health Care Services Related to COVID-19

#### 2. ADOPTING AGENCY:

Department of Financial Regulation

#### 3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

The Department anticipates that the emergency rule will provide substantial financial relief to Vermonters. The amount saved will vary depending on individual healthcare utilization and the COVID-19 infection rate in Vermont. As of March 30, 2022, the Vermont Department of Health continues to report over 200 new

cases of COVID-19 per day in the state, with a 7-day test positivity average above 5%.

Based on auditing data and cost estimates provided to the Department and 2023 health insurance rate filings, the Department found that insurers' claims experience continues to be significantly impacted by the COVID-19 pandemic. In particular, mental health services continue to see rapid growth in the number of visits – even as other service types have not returned to their pre-pandemic level of volume. In the large group insurance market, Blue Cross Blue Shield of Vermont, estimates approximately \$2.3 million in direct costs related to COVID-19 in plan year 2023 – a figure that is likely to be a fraction of the costs projected in the individual and small group market.

Under the Affordable Care Act, Regulation H-2021-01-E, and this emergency rule, health insurers are required to cover the cost of vaccines recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices (ACIP), including COVID-19 vaccines developed by Pfizer-BioNTech, Moderna, and Johnson & Johnson. According to the Vermont Department of Health, 59% of Vermont residents age 5+ have received all recommended vaccine doses, and 87% have received at least one vaccine dose. In its most recent rate filing, Blue Cross Blue Shield of Vermont reported that COVID-19 vaccines have experienced major cost fluctuations in 2020 and 2021 and that it expects this trend to continue into the foreseeable future. The company therefore included a 10% cost trend for vaccines.

Guidance released by the Biden Administration in early 2021 requires insurers to cover COVID-19 testing without member cost-sharing for asymptomatic individuals without requiring medical screenings. Insurers, however, are not required to cover COVID-19 testing without member cost-sharing if it is conducted as part of an employee return to work program. The emergency rule requires health insurers to additionally

waive member cost-sharing for all claims for polymerase chain reaction (PCR) tests as well as combined flu and COVID-19 tests. Since insurers are required to cover most COVID-19 testing without member cost-sharing by the federal government, it is unlikely that the emergency rule will impose any significant additional costs.

Additional guidance released by the Biden Administration on January 10, 2022 requires insurers to cover over the counter COVID-19 tests without member cost-sharing. Because insurers are required to cover FDA-authorized over the counter COVID-19 tests under federal law, it is unlikely that the emergency rule will impose any significant additional costs.

In light of the ongoing and evolving nature of the COVID-19 pandemic, the Department anticipates that Blue Cross Blue Shield of Vermont and MVP Health Care to price in claims related to COVID-19 into their rates across all markets.

#### 4. IMPACT ON SCHOOLS:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

The Department does not anticipate that the emergency rule will have an impact on schools.

#### 5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

Because the Department does not anticipate that the emergency rule will have an impact on schools, no alternatives were considered to reduce or ameliorate costs to local school districts while still achieving the objective of the rule.

#### 6. IMPACT ON SMALL BUSINESSES:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

None.

**7. SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Only health insurers are required to comply with the emergency rule; these entities are not small businesses.

**8. COMPARISON:**

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

According to the Centers for Disease Control (CDC) and Prevention, the Omicron variant of COVID-19, which is the dominant variant in Vermont and across the United States, spreads much more easily than earlier variants of the disease – even among individuals who are fully vaccinated. Although Omicron and related variants generally cause less severe disease than other COVID-19 variants, people may still have severe disease, need hospitalization or die from infection with this variant. Because a substantial number of new daily cases are still being reported in Vermont, and the state continues to have a high test positivity rate, the Department did not seriously consider allowing emergency rule H-2021-01 to expire. Without the emergency rule, consumer protections to ensure access to health care for these individuals would expire, with potentially devastating financial consequences.

**9. SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

In light of the Department's continuing response to COVID-19, the analysis described herein is sufficient to enact the emergency rule. The cost of the substantive changes are minimal or a net positive to Vermonters.

## Environmental Impact Analysis

### **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify "No impact anticipated" in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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#### 1. TITLE OF RULE FILING:

Access to Health Care Services Related to COVID-19

#### 2. ADOPTING AGENCY:

Department of Financial Regulation

#### 3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

None.

#### 4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

None.

#### 5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

None.

#### 6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

None.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

None.

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

None.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The emergency rule is not expected to have any environmental impacts. Therefore, this analysis is sufficient.



## Public Input Maximization Plan

### **Instructions:**

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. **TITLE OF RULE FILING:**

Access to Health Care Services Related to COVID-19

2. **ADOPTING AGENCY:**

Department of Financial Regulation

3. **PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:**

The emergency rule is fundamentally unchanged from emergency rule H-2021-01, about which the Department solicited input from a broad array of stakeholders, including the Bi-State Primary Care Association, Vermont Care Partners, Vermont Medical Society, Vermont Association of Hospitals and Health Systems, VNAs of Vermont, Office of the Health Care Advocate, Vermont Care Partners, Vermont Association of Adult Day Centers, Blue Cross Blue Shield of Vermont, MVP Health Care, Cigna, and Aetna.

The emergency rule represents a continuation of emergency rule H-2021-01. Therefore, in light of recent developments in the COVID-19 pandemic, as noted in further detail in the Department's economic impact analysis, the Department did not solicit input from stakeholders on the merits of extending consumer protections related to COVID-19.

The emergency rule will be posted to the Department's website. As with previous emergency rules issued in response to the COVID-19 pandemic, the Department will ensure the availability of materials relating to this rule online and in paper form, and work with stakeholders to educate members of the public.

**4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:**

Bi-State Primary Care Association, Vermont Care Partners, Vermont Medical Society, Vermont Association of Hospitals and Health Systems, VNAs of Vermont, Office of the Health Care Advocate, Vermont Care Partners, Vermont Association of Adult Day Centers, Blue Cross Blue Shield of Vermont, MVP Health Care, Cigna, and Aetna.

## Scientific Information Statement

**THIS FORM IS ONLY REQUIRED IF THE RULE RELIES ON SCIENTIFIC INFORMATION FOR ITS VALIDITY.**

**PLEASE REMOVE THIS FORM PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:**

### **Instructions:**

In completing the Scientific Information Statement, an agency shall provide a summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

1. TITLE OF RULE FILING:

Access to Health Care Services Related to COVID-19

2. ADOPTING AGENCY:

Department of Financial Regulation

3. BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:

4. CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:

5. INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE DOCUMENTS OF THE SCIENTIFIC INFORMATION FROM THE AGENCY OR OTHER PUBLISHING ENTITY:

## Incorporation by Reference

**THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS  
BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT  
DOES NOT APPLY TO THIS RULE FILING:**

### **Instructions:**

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and how to obtain copies.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g. federal or national standards, or regulations).

Incorporated materials will be maintained and available for inspection by the Agency.

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#### 1. TITLE OF RULE FILING:

Access to Health Care Services Related to COVID-19

#### 2. ADOPTING AGENCY:

Department of Financial Regulation

#### 3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

This rule incorporates the following laws and regulations of the United States and the State of Vermont: Title 18 V.S.A., section 9402; Department Regulation H-2009-03.

#### 4. FORMAL CITATION OF MATERIALS INCORPORATED BY REFERENCE:

18 V.S.A. § 9402; Reg. H-2009-03.

#### 5. OBTAINING COPIES: *EXPLAIN WHERE THE PUBLIC MAY OBTAIN THE MATERIAL(S) IN WRITTEN OR ELECTRONIC FORM, AND AT WHAT COST*):

All of the cited materials are available online at the following links:

Vermont Statutes Annotated:

<https://legislature.vermont.gov/statutes/>

Department of Financial Regulation Rules:

<https://dfr.vermont.gov/reg-bul-ord/>

Although all cited materials are readily available online, members of the public may obtain printed copies by contacting the Department by phone at 802-828-3301.

**6. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):**

No modifications have been made to the cited material.

Run Spell Check

Clean  
Text

**VERMONT DEPARTMENT OF FINANCIAL REGULATION**

**EMERGENCY RULE H-2022-01-E**

**ACCESS TO HEALTH CARE SERVICES RELATED TO COVID-19**

**Section 1. Background and Purpose.**

- (a) This emergency rule is adopted under Act 85 of 2022.
- (b) This emergency rule rescinds and supersedes the provisions of Rules H-2020-01-E, H-2021-01-E, and H-2021-02-E.
- (c) The purpose of this emergency rule is to expand health insurance coverage for and waive or limit certain cost-sharing requirements directly related to, COVID-19 diagnosis, treatment, and prevention.

**Section 2. Definitions.**

Terms used in this emergency rule shall have the meanings given to such terms, if any, in 18 V.S.A. § 9402 and Rule H-2009-03, Consumer Protection and Quality Requirements for Managed Care Organizations.

**Section 3. Coverage of COVID-19 Diagnosis, Treatment, and Prevention.**

- (a) Coverage of COVID-19 (SARS-CoV-2) Testing. Health insurers shall process all claims for FDA-authorized SARS-CoV-2 testing with the following procedure codes without member cost-sharing:
  - (1) Tests: U0001, U0002, U0003, U0004, 87635; and
  - (2) Specimen collection: G2023, G2024.
- (b) Coverage of COVID-19 (SARS-CoV-2) Antigen Tests. Health insurers shall process all eligible claims for retail purchase of FDA-authorized SARS-CoV-2 antigen test kits without member cost-sharing to the extent required by federal law. Further guidance regarding implementation of federal law may be found at: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf>.
- (c) Coverage of Testing for Influenza, Pneumonia, or Other Respiratory Illness Performed in Connection with Making a COVID-19 Diagnosis.
  - (1) Health insurers shall process all claims for FDA-authorized combined influenza and SARS-CoV-2 testing with procedure codes 87636, 87637, 0240U, and 0241U without member cost-sharing;

- (2) Consistent with section 6001(a) of the Families First Coronavirus Response Act (FFCRA), health insurers shall process all medically necessary claims for other testing for influenza, pneumonia, or respiratory illness related to the furnishing or administration of COVID-19 diagnostic testing without member cost-sharing.
- (d) Services Associated with COVID-19 Testing. Consistent with section 6001(a)(2) of the FFCRA, Health insurers shall process items and services related to the furnishing or administration of COVID-19 diagnostic testing, including facility fees, without member cost-sharing when one of the following diagnosis codes is the primary diagnosis on the claim:
  - (1) U07.1: Confirmed COVID-19 diagnosis;
  - (2) Z20.822: Contact with and (suspected) exposure to COVID-19; Contact with and (suspected) exposure to SARSCoV-2.
- (e) Administration. Health insurers shall establish appropriate contractual, billing, and other administrative arrangements to reimburse providers for the cost of collecting specimens and conducting testing.
- (f) Coverage of COVID-19 Treatment. Health insurers shall process all claims for the following services without member cost-sharing:
  - (1) medically necessary COVID-19 treatment, whether delivered in an inpatient or outpatient setting;
  - (2) medication administered or prescribed in connection with medically necessary COVID-19 treatment as described in paragraph (1) of this subsection; and
  - (3) emergency and nonemergency ambulance transport of members diagnosed with or suspected of having COVID-19 to and from recovery or isolation areas.
- (g) Coverage of COVID-19 Prevention. Consistent with section 4203 of the Coronavirus Aid, Relief, and Economic Security Act, health insurers shall cover any qualifying coronavirus preventive service without member cost-sharing.
- (h) Out-of-Network Services. Consistent with § 5.1(K)(2) of Department Rule H-2009-03, health insurers shall cover out-of-network services described in subsections (a), (b), (c), (e), and (f) of this section without member cost-sharing. The liability of a health insurer to a non-contracted provider for services rendered to a member under this subsection shall be limited to the reasonable and customary value for the health care services rendered, except that it shall be the responsibility of the health insurer to respond to, defend against, and resolve any provider request or claim for payment exceeding the amount it paid or reimbursed the under this subsection. There shall be no additional liability to the member.

**Section 4. Severability.**

If any provision of this emergency rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions to other persons or circumstances shall be not affected thereby.

**Section 5. Conflict with Federal Law.**

Nothing in this emergency rule is intended to or should be construed to be in conflict with federal law.

**Section 6. Effective Dates.**

This emergency rule shall become effective on adoption and, pursuant to the authority granted in Act 85 of 2022 (§ 4), shall remain in effect until March 31, 2023.





**No. 6. 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.**

(S.117)

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

Sec. 1. 2020 Acts and Resolves No. 91, as amended by 2020 Acts and Resolves No. 140, Sec. 13, 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, ~~2021~~ 2022, 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, ~~2021~~ 2022, 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 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, ~~2021~~ 2022, 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. 6. MEDICAID AND HEALTH INSURERS; PROVIDER

##### ENROLLMENT AND CREDENTIALING

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

March 31, 2022, 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.

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

\* \* \*

\* \* \* 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 ~~June 30, 2021~~ March 31, 2022, 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.

\* \* \*

#### Sec. 12. BUPRENORPHINE; PRESCRIPTION RENEWALS

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

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

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

\* \* \* Regulation of Professions \* \* \*

\* \* \*

#### 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, 2021 2022, 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 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 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, ~~2021~~ 2022, 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 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.



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

LICENSEES; BOARD OF MEDICAL PRACTICE; OFFICE OF  
PROFESSIONAL REGULATION

(a)(1) Through March 31, ~~2021~~ 2022, a former health care professional, including a mental health professional, ~~who retired~~ whose Vermont license, certificate, or registration became inactive not more than three years earlier ~~with the individual's Vermont license, certificate, or registration 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 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 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, 2021 ~~2022~~, the Board of Medical Practice and the Office of Professional Regulation may permit former health care professionals, including mental health professionals, ~~who retired~~ whose Vermont license, certificate, or registration became inactive more than three but less than 10 years earlier ~~with their Vermont license, certificate, or registration~~ 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, ~~2021~~ 2022, 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, ~~2021~~ 2022, 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, ~~2021~~ 2022, 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.

\* \* \*

\* \* \* Telehealth \* \* \*

\* \* \*

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, ~~2021~~ 2022, 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:

(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; and.

(b)(3) obtaining and documenting 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 is 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, ~~2021~~ 2022 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, ~~2021~~ 2022, provided the licensee remains in good standing.

(b) Through March 31, ~~2021~~ 2022, the Board of Medical Practice or its Executive Director may waive ~~supervision and scope of practice~~ 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. 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.

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

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 ~~July 1, 2021~~ April 1, 2022, 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 ~~June 30, 2021~~ March 31, 2022:

~~(1)(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

~~(2)(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; ~~and~~

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

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

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

Subchapter 14. ~~Telemedicine~~ Telehealth

\* \* \*

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

(a) As used in this section:



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

(2) "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; Medicaid, to the extent permitted by the Centers for Medicare and Medicaid Services; and any other public health care assistance program offered or administered by the State or by any subdivision or instrumentality of the State. The term does not include policies or plans providing coverage for a specified disease or other limited benefit coverage.

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

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

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

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

CHAPTER 219. HEALTH INFORMATION TECHNOLOGY AND  
TELEMEDICINE TELEHEALTH

\* \* \*

Subchapter 2. Telemedicine Telehealth

\* \* \*

§ 9362. HEALTH CARE PROVIDERS DELIVERING HEALTH CARE  
SERVICES BY AUDIO-ONLY TELEPHONE

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

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

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

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

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

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

(B) A health care provider shall deliver care that is timely and complies with contractual requirements and shall not delay care unnecessarily if a patient elects to receive services through an in-person visit or telemedicine instead of by audio-only telephone.

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

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

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

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

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

(D) informing the patient of the presence of any other individual who will be participating in or listening to the patient's consultation with the provider and obtaining the patient's permission for the participation or observation;

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

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

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

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

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

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

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

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

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

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

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

(a)(1) On or before July 1, 2021, the Department of Financial Regulation, in consultation with the Department of Vermont Health Access, the Green Mountain Care Board, representatives of health care providers, health insurers, and other interested stakeholders, shall determine the appropriate codes or modifiers, or both, to be used by providers and insurers, including Vermont Medicaid to the extent permitted by the Centers for Medicare and Medicaid Services, in the billing of and payment for health care services delivered using audio-only telephone in order to allow for consistent data collection, identify appropriate codes for services that do not have in-person equivalents, and minimize the administrative burden on providers. To the extent possible, the use of codes or modifiers, or both, shall be done in a manner that allows data on the use of audio-only telephone services to be identified using the Vermont Healthcare Claims Uniform Reporting and Evaluation System (VHCURES).

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

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

Sec. 7. AUDIO-ONLY TELEPHONE REIMBURSEMENT AMOUNTS

FOR PLAN YEARS 2022, 2023, AND 2024

The Department of Financial Regulation, in consultation with the Department of Vermont Health Access, the Green Mountain Care Board, representatives of health care providers, health insurers, and other interested stakeholders, shall determine the amounts that health insurance plans shall reimburse health care providers for delivering health care services by audio-only telephone during plan years 2022, 2023, and 2024. In determining the reimbursement amounts, the Department shall seek to find a reasonable balance between the costs to patients and the health care system and

reimbursement amounts that do not discourage health care providers from delivering medically necessary, clinically appropriate health care services by audio-only telephone. The Department may determine different reimbursement amounts for different types of services and may modify the rates that will apply in different plan years as appropriate but shall finalize its determinations not later than April 1 for plan years after 2022.

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.

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

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

(B) The provisions of subdivision (A) of this subdivision (2) shall not apply.



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

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

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

§ 9721. ADVANCE DIRECTIVES; COVID-19 STATE OF EMERGENCY;

REMOTE WITNESSES AND EXPLAINERS

\* \* \*

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

\* \* \*

(d)(1) Notwithstanding any provision of subsection 9703(d) or (e) of this title to the contrary, an advance directive executed by a principal between February 15, 2020 and June 30, ~~2021~~ 2022 while the principal was being admitted to or was a resident of a nursing home or residential care facility or was being admitted to or was a patient in a hospital shall be deemed to be valid

even if the individual who explained the nature and effect of the advance directive to the principal in accordance with subsection 9703(d) or (e) of this title, as applicable, was not physically present in the same location as the principal at the time of the explanation, provided the individual delivering the explanation was communicating with the principal by video or telephone.

\* \* \*

Sec. 11. [Deleted.]

Sec. 12. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: March 29, 2021

**No. 85. An act relating to extending COVID-19 health care regulatory flexibility.**

(H.654)

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

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.

\* \* \*

#### Sec. 12. BUPRENORPHINE; PRESCRIPTION RENEWALS

Through March 31, ~~2022~~ 2023, to the extent permitted under federal law, a health care professional authorized to prescribe buprenorphine for treatment of substance use disorder may authorize renewal of a patient's existing buprenorphine prescription without requiring an office visit.

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

Through March 31, ~~2022~~ 2023, to the extent permitted under federal law, the Agency of Human Services may reimburse Medicaid-funded long-term care facilities and other programs providing 24-hour per day services for their bed-hold days.

\* \* \*

\* \* \* Regulation of Professions \* \* \*

\* \* \*

#### 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, for a period not to exceed six months, 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 throughout the period the health care professional is practicing in Vermont, which shall not exceed six months for a health care professional providing health care services 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.

(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.

\* \* \*

\* \* \* Telehealth \* \* \*

\* \* \*

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(e), 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. 18 V.S.A. § 9721 is amended to read:

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

\* \* \*

(c)(1) Notwithstanding any provision of subsection 9703(b) of this title to the contrary, an advance directive executed by a principal between June 15, 2020 and ~~June 30, 2022~~ March 31, 2023 shall be deemed to be valid even if the principal signed the advance directive outside the physical presence of one or both of the required witnesses, provided all of the following conditions are met with respect to each remote witness:

\* \* \*

(d)(1) Notwithstanding any provision of subsection 9703(d) or (e) of this title to the contrary, an advance directive executed by a principal between February 15, 2020 and ~~June 30, 2022~~ March 31, 2023 while the principal was being admitted to or was a resident of a nursing home or residential care facility or was being admitted to or was a patient in a hospital shall be deemed to be valid even if the individual who explained the nature and effect of the advance directive to the principal in accordance with subsection 9703(d) or (e) of this title, as applicable, was not physically present in the same location as the principal at the time of the explanation, provided the individual delivering the explanation was communicating with the principal by video or telephone.

(2) An advance directive executed in accordance with this subsection shall remain valid as set forth in subsection (b) or (c) of this section, as applicable.

Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: March 22, 2022



# Proposed Rules Postings

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### Deadline For Public Comment

Deadline: Unavailable.

The deadline for public comment is unavailable for this rule. Contact the agency or primary contact person listed below for assistance.

### Rule Details

|                  |   |
|------------------|---|
| Rule Number:     | 22-E06  |
| Title:           | Access to Health Care Services Related to COVID-19.   |
| Type:            | Emergency   |
| Status:          | Adopted   |
| Agency:          | Department of Financial Regulation  |
| Legal Authority: | Act No. 6 of 2021 § 8, as amended by Act No. 85 of 2022 § 4.  |
| Summary:         | The emergency rule requires health insurers to provide continuing coverage of COVID-19 diagnosis, testing (including rapid antigen testing), and treatment without member cost-sharing. |

**Persons Affected:** The emergency rule primarily affects health insurers, pharmacy benefit managers, and members of health insurance plans.

**Economic Impact:** The Department anticipates that the emergency rule will provide substantial financial relief to Vermonters who still require access to COVID-19 testing and treatment. Vermont's regulated health insurers continue to be in a strong financial position, and the emergency rule is not expected to have a material effect on their solvency or ability to pay claims.

**Posting date:** Apr 01, 2022

## Hearing Information

There are not Hearings scheduled for this Rule

## Contact Information

### Information for Primary Contact

**PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.**

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[SEND A COMMENT](#)

**Website Address:** <https://epuc.vermont.gov/?qnode/64/166982>

[VIEW WEBSITE](#)

### Information for Secondary Contact

**SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.**

**Level:** Secondary



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## Keyword Information

Keywords:

Health Insurance  
COVID-19  
Testing  
Treatment

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