

1 Introduced by Committee on Health and Welfare

2 Date:

3 Subject: Health; COVID-19; health care providers; regulatory flexibility;
4 advance directives; immunization registry

5 Statement of purpose of bill as introduced: This bill proposes to extend until
6 March 31, 2022 certain provisions of 2020 Acts and Resolves Nos. 91 and 140
7 allowing for health care-related regulatory flexibility during and immediately
8 following the COVID-19 pandemic. It would authorize the Department of
9 Financial Regulation to adopt rules expanding patients' access to and
10 providers' reimbursement for health care services delivered by telephone until
11 January 1, 2024. The bill would also allow remote witnesses for advance
12 directives through June 30, 2022 and permit the Department of Health to
13 provide immunization registry information to the Vermont Health Information
14 Exchange.

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

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

18 Sec. 1. 2020 Acts and Resolves No. 91, as amended by 2020 Acts and
19 Resolves No. 140, Sec. 13, is further amended to read:

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

1 Department of Health regarding measures to address employee safety, to the
2 extent feasible.

3 * * * Compliance Flexibility * * *

4 Sec. 4. HEALTH CARE AND HUMAN SERVICE PROVIDER

5 REGULATION; WAIVER OR VARIANCE PERMITTED

6 Notwithstanding any provision of the Agency of Human Services’
7 administrative rules or standards to the contrary, through March 31, ~~2024~~
8 2022, the Secretary of Human Services may waive or permit variances from
9 the following State rules and standards governing providers of health care
10 services and human services as necessary to prioritize and maximize direct
11 patient care, support children and families who receive benefits and services
12 through the Department for Children and Families, and allow for continuation
13 of operations with a reduced workforce and with flexible staffing arrangements
14 that are responsive to evolving needs, to the extent such waivers or variances
15 are permitted under federal law:

16 (1) Hospital Licensing Rule;

17 (2) Hospital Reporting Rule;

18 (3) Nursing Home Licensing and Operating Rule;

19 (4) Home Health Agency Designation and Operation Regulations;

20 (5) Residential Care Home Licensing Regulations;

21 (6) Assisted Living Residence Licensing Regulations;

- 1 (7) Home for the Terminally Ill Licensing Regulations;
2 (8) Standards for Adult Day Services;
3 (9) Therapeutic Community Residences Licensing Regulations;
4 (10) Choices for Care High/Highest Manual;
5 (11) Designated and Specialized Service Agency designation and
6 provider rules;
7 (12) Child Care Licensing Regulations;
8 (13) Public Assistance Program Regulations;
9 (14) Foster Care and Residential Program Regulations; and
10 (15) other rules and standards for which the Agency of Human Services
11 is the adopting authority under 3 V.S.A. chapter 25.

12 * * *

13 Sec. 6. MEDICAID AND HEALTH INSURERS; PROVIDER
14 ENROLLMENT AND CREDENTIALING

15 ~~(a) Until the last to terminate of a declared state of emergency in Vermont~~
16 ~~as a result of COVID-19, a declared federal public health emergency as a result~~
17 ~~of COVID-19, and a declared national emergency as a result of COVID-19~~
18 March 31, 2022, and to the extent permitted under federal law, the Department
19 of Vermont Health Access shall relax provider enrollment requirements for the
20 Medicaid program, and the Department of Financial Regulation shall direct
21 health insurers to relax provider credentialing requirements for health

1 insurance plans, in order to allow for individual health care providers to deliver
2 and be reimbursed for services provided across health care settings as needed
3 to respond to Vermonters’ evolving health care needs.

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

8 * * *

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

10 * * *

11 Sec. 9. PRESCRIPTION DRUGS; MAINTENANCE MEDICATIONS;

12 EARLY REFILLS

13 (a) As used in this section, “health insurance plan” means any health
14 insurance policy or health benefit plan offered by a health insurer, as defined in
15 18 V.S.A. § 9402. The term does not include policies or plans providing
16 coverage for a specified disease or other limited benefit coverage.

17 (b) Through ~~June 30, 2021~~ March 31, 2022, all health insurance plans and
18 Vermont Medicaid shall allow their members to refill prescriptions for chronic
19 maintenance medications early to enable the members to maintain a 30-day
20 supply of each prescribed maintenance medication at home.

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

5 * * *

6 Sec. 12. BUPRENORPHINE; PRESCRIPTION RENEWALS

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

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

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

16 * * * Regulation of Professions * * *

17 * * *

18 Sec. 17. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
19 MEDICAL PRACTICE; OUT-OF-STATE HEALTH CARE
20 PROFESSIONALS

1 (a) Notwithstanding any provision of Vermont’s professional licensure
2 statutes or rules to the contrary, through March 31, ~~2021~~ 2022, 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, as a volunteer member of the Medical Reserve
8 Corps, or as part of the staff of a licensed facility or federally qualified health
9 center, provided the health care professional:

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

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

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

17 (b) A health care professional who plans to provide health care services in
18 Vermont as a volunteer member of the Medical Reserve Corps or as part of the
19 staff of a licensed facility or federally qualified health center shall submit or
20 have submitted on the individual’s behalf the individual’s name, contact

1 information, and the location or locations at which the individual will be
2 practicing to:

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

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

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

12 (d)(1) This section shall remain in effect through March 31, ~~2021~~ 2022,
13 provided the health care professional remains licensed, certified, or registered
14 in good standing.

15 (2) The Board of Medical Practice and Office of Professional
16 Regulation shall provide appropriate notice of the March 31, 2022 expiration
17 date of this section to:

18 (A) health care professionals providing health care services in
19 Vermont under this section;

20 (B) the Medical Reserve Corps; and

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

3 Sec. 18. ~~RETIRED HEALTH CARE PROFESSIONALS~~ INACTIVE
4 LICENSEES; BOARD OF MEDICAL PRACTICE; OFFICE OF
5 PROFESSIONAL REGULATION

6 (a)(1) Through March 31, ~~2021~~ 2022, a former health care professional,
7 including a mental health professional, ~~who retired~~ whose Vermont license,
8 certificate, or registration became inactive not more than three years earlier
9 ~~with the individual's Vermont license, certificate, or registration~~ and was in
10 good standing at the time it became inactive may provide health care services,
11 including mental health services, to a patient located in Vermont using
12 telehealth, as a volunteer member of the Medical Reserve Corps, or as part of
13 the staff of a licensed facility or federally qualified health center after
14 submitting, or having submitted on the individual's behalf, to the Board of
15 Medical Practice or Office of Professional Regulation, as applicable, the
16 individual's name, contact information, and the location or locations at which
17 the individual will be practicing.

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

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

4 (a)(1) Through March 31, ~~2021~~ 2022, if the Director of Professional
5 Regulation finds that a regulatory body attached to the Office of Professional
6 Regulation by 3 V.S.A. § 122 cannot reasonably, safely, and expeditiously
7 convene a quorum to transact business, the Director may exercise the full
8 powers and authorities of that regulatory body, including disciplinary
9 authority.

10 (2) Through March 31, ~~2021~~ 2022, if the Executive Director of the
11 Board of Medical Practice finds that the Board cannot reasonably, safely, and
12 expeditiously convene a quorum to transact business, the Executive Director
13 may exercise the full powers and authorities of the Board, including
14 disciplinary authority.

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

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

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

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

7 Through March 31, ~~2021~~ 2022, the Director of Professional Regulation and
8 the Commissioner of Health may issue such orders governing regulated
9 professional activities and practices as may be necessary to protect the public
10 health, safety, and welfare. If the Director or Commissioner finds that a
11 professional practice, act, offering, therapy, or procedure by persons licensed
12 or required to be licensed by Title 26 of the Vermont Statutes Annotated is
13 exploitative, deceptive, or detrimental to the public health, safety, or welfare,
14 or a combination of these, the Director or Commissioner may issue an order to
15 cease and desist from the applicable activity, which, after reasonable efforts to
16 publicize or serve the order on the affected persons, shall be binding upon all
17 persons licensed or required to be licensed by Title 26 of the Vermont Statutes
18 Annotated, and a violation of the order shall subject the person or persons to
19 professional discipline, may be a basis for injunction by the Superior Court,
20 and shall be deemed a violation of 3 V.S.A. § 127.

21 * * *

1 telemedicine or store-and-forward technology prior to delivering services to
2 the patient in accordance with 18 V.S.A. § 9361(c), if obtaining or
3 documenting such consent, or both, is not practicable under the circumstances.

4 * * *

5 Sec. 2. 2020 Acts and Resolves No. 140, Sec. 15 is amended to read:

6 Sec. 15. BOARD OF MEDICAL PRACTICE; TEMPORARY

7 PROVISIONS; PHYSICIANS, PHYSICIAN ASSISTANTS,

8 AND PODIATRISTS

9 (a) Notwithstanding any provision of 26 V.S.A. § 1353(11) to the contrary,
10 the Board of Medical Practice or its Executive Director may issue a temporary
11 license through March 31, ~~2021~~ 2022 to an individual who is licensed to
12 practice as a physician, physician assistant, or podiatrist in another jurisdiction,
13 whose license is in good standing, and who is not subject to disciplinary
14 proceedings in any other jurisdiction. The temporary license shall authorize
15 the holder to practice in Vermont until a date not later than April 1, ~~2021~~ 2022,
16 provided the licensee remains in good standing.

17 (b) Through March 31, ~~2021~~ 2022, the Board of Medical Practice or its
18 Executive Director may waive ~~supervision and scope of practice~~ requirements
19 for physician assistants, including scope of practice requirements and the
20 requirement for documentation of the relationship between a physician
21 assistant and a physician pursuant to 26 V.S.A. § 1735a. The Board or

1 Executive Director may impose limitations or conditions when granting a
2 waiver under this subsection.

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

6 Sec. 8. ACCESS TO HEALTH CARE SERVICES; DEPARTMENT OF
7 FINANCIAL REGULATION; EMERGENCY RULEMAKING

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

11 (b)(1) Until ~~July 1, 2021~~ April 1, 2022, and notwithstanding any provision
12 of 3 V.S.A. § 844 to the contrary, the Department of Financial Regulation shall
13 consider adopting, and shall have the authority to adopt, emergency rules to
14 address the following through ~~June 30, 2021~~ March 30, 2022:

15 ~~(A)~~ expanding health insurance coverage for, and waiving or limiting
16 cost-sharing requirements directly related to, the diagnosis of COVID-19,
17 including tests for influenza, pneumonia, and other respiratory viruses
18 performed in connection with making a COVID-19 diagnosis; the treatment of
19 COVID-19 when it is the primary or a secondary diagnosis; and the prevention
20 of COVID-19; and

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

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

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

14 Sec. 4. 18 V.S.A. § 9721 is amended to read:

15 § 9721. ADVANCE DIRECTIVES; COVID-19 STATE OF EMERGENCY;

16 REMOTE WITNESSES AND EXPLAINERS

17 * * *

18 (c)(1) Notwithstanding any provision of subsection 9703(b) of this title to
19 the contrary, an advance directive executed by a principal between June 15,
20 2020 and June 30, ~~2021~~ 2022 shall be deemed to be valid even if the principal
21 signed the advance directive outside the physical presence of one or both of the

1 required witnesses, provided all of the following conditions are met with
2 respect to each remote witness:

3 * * *

4 (d)(1) Notwithstanding any provision of subsection 9703(d) or (e) of this
5 title to the contrary, an advance directive executed by a principal between
6 February 15, 2020 and June 30, ~~2021~~ 2022 while the principal was being
7 admitted to or was a resident of a nursing home or residential care facility or
8 was being admitted to or was a patient in a hospital shall be deemed to be valid
9 even if the individual who explained the nature and effect of the advance
10 directive to the principal in accordance with subsection 9703(d) or (e) of this
11 title, as applicable, was not physically present in the same location as the
12 principal at the time of the explanation, provided the individual delivering the
13 explanation was communicating with the principal by video or telephone.

14 * * *

15 Sec. 5. 18 V.S.A. § 1129 is amended to read:

16 § 1129. IMMUNIZATION REGISTRY

17 (a) A health care provider shall report to the Department all data regarding
18 immunizations of adults and of children under 18 years of age within seven
19 days of the immunization, provided that required reporting of immunizations
20 of adults shall commence within one month after the health care provider has
21 established an electronic health records system and data interface pursuant to

1 the e-health standards developed by the Vermont Information Technology
2 Leaders. A health insurer shall report to the Department all data regarding
3 immunizations of adults and of children under 18 years of age at least
4 quarterly. All data required pursuant to this subsection shall be reported in a
5 format required by the Department.

6 (b) The Department may use the data to create a registry of immunizations.
7 Registry information shall remain confidential and privileged, except as
8 provided in subsections (c) and (d) of this section. Registry information
9 regarding a particular adult shall be provided, upon request, to the adult, the
10 adult's health care provider, and the adult's health insurer. Registry
11 information regarding a particular minor child may be provided, upon request,
12 to school nurses, or in the absence of a nurse on staff, administrators, and upon
13 request and with written parental consent, to licensed day care providers, to
14 document compliance with Vermont immunization laws. Registry information
15 regarding a particular child shall be provided, upon request to the minor child's
16 parent or guardian, health insurer, and health care provider, or to the child after
17 the child reaches the age of majority.

18 (c) The Department may exchange confidential registry information with
19 the immunization registries of other states in order to obtain comprehensive
20 immunization records.

1 (d) The Department may provide confidential registry information to health
2 care provider networks serving Vermont patients, to the Vermont Health
3 Information Exchange, and, with the approval of the Commissioner, to
4 researchers who present evidence of approval from an institutional review
5 board in accordance with 45 C.F.R. § 164.512.

6 (e) Prior to releasing confidential information pursuant to subsections (c)
7 and (d) of this section, the Commissioner shall obtain from State registries,
8 health care provider networks, the Vermont Health Information Exchange, and
9 researchers a written agreement to keep any identifying information
10 confidential and privileged.

11 * * *

12 Sec. 6. EFFECTIVE DATE

13 This act shall take effect on passage.