

To: Senate Health & Welfare and House Health Care Committees

From: The coalition of health care association leaders

Date: January 10, 2022

RE: Follow up on Extension of Expiring Act 6 COVID-Related Flexibilities

Thank you for taking testimony from the coalition of health care association leaders yesterday regarding provisions of Act 6, providing COVID-19-related regulatory flexibility. The work in this area has been an example to other states.

As we said in our testimony today, the entire health care system is facing the most serious staffing crisis of the pandemic to date. We urge you to extend the regulatory flexibilities listed below as quickly as possible to avoid disruption.

You asked for our position on whether there are any COVID-related flexibilities that should be made permanent. We recommend the following:

- Enact the Act 21 Interstate Telehealth Working Group recommendations, immediately. Our strong preference is to enact both short and long-term strategies at this time so that OPR and the Board of Medical Practice can begin to work on implementation in a comprehensive manner. However, if the long-term recommendations cannot be enacted before March 31st, at a minimum incorporate the short term April 1, 2022-June 30 2023 registration into the Act 6 extensions so that it will be implemented with no disruption to telehealth during this crucial time.
- Pass temporary extensions immediately and consider permanent changes to other provisions in a separate process that can be more deliberate and occur after the health care system has gotten past the current case spike. We are not able to effectively engage our members in policy making at this time, they are focused on the crisis at hand.
 - To date, the coalition has only identified two additional provisions that could be considered for permanent changes – those related to buprenorphine prescribing without an in-person visit and remote witnesses for advance directives. The coalition has not developed a position on either issue and recommends they be considered for extension only after stakeholders have had additional time to consider the long-term implications.
- Reinstate Section 5 from Act 91 of 2020, which allows the Green Mountain Care Board to waive or permit variances from State laws, guidance, and standards for certain regulatory activities until March 31, 2023. For example, this could allow variances from the full CON process to allow for surge capacity at hospital or mental health facilities.
 - VAHHS also requests new language for the hospital budget process that allows hospitals to invest in retaining and recruiting workers to ensure health care services for Vermonters.
 - (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~~ **until March 30, 2023**, the Green Mountain Care Board may waive or permit...

- (b) For hospital budget review, the Green Mountain Care Board shall exempt hospital investments in order to meet labor demands from the budget-to-actual reconciliation process or any budget caps.

Section 1 of Act 6 (section numbers below refer to the amended sections of original statute):

Section of Act 91/140	Act 6 page	Coalition Recommended Extension	Summary
1	1	March 31, 2023	AHS consideration of modifying existing rules or adopting emergency rules to protect access to services
3	1	March 31, 2023	Protections for employees of health care facilities and human service providers
4	2	March 31, 2023	Authority for AHS Secretary to waive or allow variances from rules and standards governing providers of health care and human services
5	Expired	March 31, 2023	GMCB flexibility for waivers or variances re: hospital budget process, CONs, health insurance rate review, and ACO certification and budget review. Plus, guaranteed budgetary flexibility for hospital recruitment and retention efforts.
6	3	March 31, 2023	Flexibility in provider credentialing requirements from Medicaid and health insurers
9	4	March 31, 2023	Early refills of maintenance medications
12	5	March 31, 2023	Buprenorphine prescription renewals without an office visit
13	5	March 31, 2023	Authority for AHS to pay long-term care facilities for bed-hold days
17	5	Varies: <ul style="list-style-type: none"> • Telehealth: adopt Act 21 recommendations • MRC/on staff of facility: extend to March 31, 2023 for temporary staffing needs • Add reference to definition of health facility (18 V.S.A. §9432) • Add clarification will not impact federal temporary nurse aide waiver for SNFs 	Ability for out-of-state licensed health care professionals to provide services in Vermont: <ol style="list-style-type: none"> (1) By Telehealth (2) As a volunteer of Medical Reserve Corps (3) On staff of licensed facility or FQHC
18	8	March 31, 2023 & add reference to definition of health facility (18 V.S.A. §9432)	Ability for retired/inactive licensed health care professionals to provide services
20	10	March 31, 2023	Emergency authority for Director of OPR and Executive Director of BMP to act for boards

21	11	March 31, 2023	Authority for OPR Director and Commissioner of Health to issue emergency regulatory orders
26(a)	12	Until end of Federal PHE	Ability to waive HIPAA-compliant-connection requirements for telemedicine, to extent permitted by federal law

Section 2 of Act 6:

15 (of Act 140)	13	March 31, 2023	Authority for BMP to issue temporary licenses to out-of-state providers and waive certain requirements for physician assistants
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Section 2a of Act 6:

12a (of Act 178)	14	March 31, 2023	Pharmacists' authority to order and administer COVID tests
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Section 3 of Act 6

8 (of Act 91/140)	14	March 31, 2023	DFR has authority to adopt emergency rules regarding health insurance coverage and cost-sharing requirements for diagnosis, treatment, and prevention of COVID-19
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Section 10 of Act 6

n/a	24	March 31, 2023	Allows remote witnesses and explainers for advance directives
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Thank you for your leadership addressing needed regulatory flexibilities. We are happy to answer any questions regarding the specific provisions of Act 6 that require an extension.

Our coalition is comprised of:

Jessa Barnard
Vermont Medical Society

Matthew Houde
Dartmouth Hitchcock-Health

Devon Green
Vermont Association of Hospitals
and Health Systems

Laura Pelosi, on behalf of
Vermont Health Care Association

Jill Mazza Olson
VNAs of Vermont

Mary Kate Mohlman
Bi-State Primary Care Association

Julie Tessler
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Stephanie Winters
Vermont Academy of Family Physicians
American Academy of Pediatrics – Vermont Chapter

Patrick Gallivan
Vermont State Dental Society

Virginia Renfrew on behalf of
Vermont Association of Adult Days