

1 Introduced by Senate Committee on Health and Welfare

2 Date:

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

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

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

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

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

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

16 \* \* \* Supporting Health Care and Human Service Provider Sustainability \* \* \*

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

18 HUMAN SERVICE PROVIDER SUSTAINABILITY

19 ~~Through March 31, 2021~~ During a declared state of emergency in Vermont

20 as a result of COVID-19 and for a period of three months following the

1 termination of the state of emergency, the Agency of Human Services shall  
2 consider modifying existing rules or adopting emergency rules to protect  
3 access to health care services, long-term services and supports, and other  
4 human services under the Agency’s jurisdiction. In modifying or adopting  
5 rules, the Agency shall consider the importance of the financial viability of  
6 providers that rely on funding from the State, federal government, or Medicaid,  
7 or a combination of these, for a major portion of their revenue.

8 \* \* \*

9 \* \* \* Protections for Employees of Health Care Facilities and

10 Human Service Providers \* \* \*

11 Sec. 3. PROTECTIONS FOR EMPLOYEES OF HEALTH CARE

12 FACILITIES AND HUMAN SERVICE PROVIDERS

13 In order to protect employees of a health care facility or human service  
14 provider who are not licensed health care professionals from the risks  
15 associated with COVID-19, ~~through March 31, 2021~~ during a declared state of  
16 emergency in Vermont as a result of COVID-19 and for a period of three  
17 months following the termination of the state of emergency, all health care  
18 facilities and human service providers in Vermont, including hospitals,  
19 federally qualified health centers, rural health clinics, residential treatment  
20 programs, homeless shelters, home- and community-based service providers,  
21 and long-term care facilities, shall follow guidance from the Vermont

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, 2021~~  
8 during a declared state of emergency in Vermont as a result of COVID-19 and  
9 for a period of three months following the termination of the state of  
10 emergency, the Secretary of Human Services may waive or permit variances  
11 from the following State rules and standards governing providers of health care  
12 services and human services as necessary to prioritize and maximize direct  
13 patient care, support children and families who receive benefits and services  
14 through the Department for Children and Families, and allow for continuation  
15 of operations with a reduced workforce and with flexible staffing arrangements  
16 that are responsive to evolving needs, to the extent such waivers or variances  
17 are permitted under federal law:

18 (1) Hospital Licensing Rule;

19 (2) Hospital Reporting Rule;

20 (3) Nursing Home Licensing and Operating Rule;

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

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

14 \* \* \*

15 Sec. 6. MEDICAID AND HEALTH INSURERS; PROVIDER

16 ENROLLMENT AND CREDENTIALING

17 Until three months following the termination of the last to terminate of a  
18 declared state of emergency in Vermont as a result of COVID-19, a declared  
19 federal public health emergency as a result of COVID-19, and a declared  
20 national emergency as a result of COVID-19, and to the extent permitted under  
21 federal law, the Department of Vermont Health Access shall relax provider

1 enrollment requirements for the Medicaid program, and the Department of  
2 Financial Regulation shall direct health insurers to relax provider credentialing  
3 requirements for health insurance plans, in order to allow for individual health  
4 care providers to deliver and be reimbursed for services provided across health  
5 care settings as needed to respond to Vermonters’ evolving health care needs.

6 \* \* \*

7 \* \* \* Access to Health Care Services and Human Services \* \* \*

8 \* \* \*

9 Sec. 9. PRESCRIPTION DRUGS; MAINTENANCE MEDICATIONS;

10 EARLY REFILLS

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

15 (b) ~~Through June 30, 2021~~ During a declared state of emergency in  
16 Vermont as a result of COVID-19 and for a period of three months following  
17 the termination of the state of emergency, 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 Sec. 10. PHARMACISTS; CLINICAL PHARMACY; EXTENSION OF  
6 PRESCRIPTION FOR MAINTENANCE MEDICATION

7 **(OPR says no extension necessary – authority codified in 2020 OPR bill)**

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

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

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

1           Sec. 11. PHARMACISTS; CLINICAL PHARMACY; THERAPEUTIC

2                               SUBSTITUTION DUE TO LACK OF AVAILABILITY

3           **(OPR says no extension necessary – authority codified in 2020 OPR bill)**

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

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

16          Sec. 12. BUPRENORPHINE; PRESCRIPTION RENEWALS

17          ~~Through March 31, 2021~~ During a declared state of emergency in Vermont  
18          as a result of COVID-19 and for a period of three months following the  
19          termination of the state of emergency, to the extent permitted under federal  
20          law, a health care professional authorized to prescribe buprenorphine for

1 treatment of substance use disorder may authorize renewal of a patient's  
2 existing buprenorphine prescription without requiring an office visit.

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

4 ~~Through March 31, 2021~~ During a declared state of emergency in Vermont  
5 as a result of COVID-19 and for a period of three months following the  
6 termination of the state of emergency, to the extent permitted under federal  
7 law, the Agency of Human Services may reimburse Medicaid-funded long-  
8 term care facilities and other programs providing 24-hour per day services for  
9 their bed-hold days.

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

11 \* \* \*

12 Sec. 17. OFFICE OF PROFESSIONAL REGULATION; BOARD OF  
13 MEDICAL PRACTICE; OUT-OF-STATE HEALTH CARE  
14 PROFESSIONALS

15 (a) Notwithstanding any provision of Vermont's professional licensure  
16 statutes or rules to the contrary, ~~through March 31, 2021~~ during a declared  
17 state of emergency in Vermont as a result of COVID-19 and for a period of  
18 three months following the termination of the state of emergency, a health care  
19 professional, including a mental health professional, who holds a valid license,  
20 certificate, or registration to provide health care services in any other U.S.  
21 jurisdiction shall be deemed to be licensed, certified, or registered to provide



1 health care services, including mental health services, to a patient located in  
2 Vermont using telehealth or as part of the staff of a licensed facility, provided  
3 the health care professional:

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

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

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

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

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

18 (2) the Office of Professional Regulation for all other health care  
19 professions.

20 (c) A health care professional who delivers health care services in Vermont  
21 pursuant to subsection (a) of this section shall be subject to the imputed

1 jurisdiction of the Board of Medical Practice or the Office of Professional  
2 Regulation, as applicable based on the health care professional’s profession, in  
3 accordance with Sec. 19 of this act.

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

8 Sec. 18. RETIRED HEALTH CARE PROFESSIONALS; BOARD OF  
9 MEDICAL PRACTICE; OFFICE OF PROFESSIONAL  
10 REGULATION

11 (a)(1) ~~Through March 31, 2021~~ During a declared state of emergency in  
12 Vermont as a result of COVID-19 and for a period of three months following  
13 the termination of the state of emergency, a former health care professional,  
14 including a mental health professional, who retired not more than three years  
15 earlier with the individual’s Vermont license, certificate, or registration in  
16 good standing may provide health care services, including mental health  
17 services, to a patient located in Vermont using telehealth or as part of the staff  
18 of a licensed facility after submitting, or having submitted on the individual’s  
19 behalf, to the Board of Medical Practice or Office of Professional Regulation,  
20 as applicable, the individual’s name, contact information, and the location or  
21 locations at which the individual will be practicing.

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

5           (b) ~~Through March 31, 2021~~ During a declared state of emergency in  
6           Vermont as a result of COVID-19 and for a period of three months following  
7           the termination of the state of emergency, the Board of Medical Practice and  
8           the Office of Professional Regulation may permit former health care  
9           professionals, including mental health professionals, who retired more than  
10          three but less than 10 years earlier with their Vermont license, certificate, or  
11          registration in good standing to return to the health care workforce on a  
12          temporary basis to provide health care services, including mental health  
13          services, to patients in Vermont. The Board of Medical Practice and Office of  
14          Professional Regulation may issue temporary licenses to these individuals at  
15          no charge and may impose limitations on the scope of practice of returning  
16          health care professionals as the Board or Office deems appropriate.

17                               \* \* \*

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

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

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

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

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

8 Sec. 21. OFFICE OF PROFESSIONAL REGULATION; BOARD OF  
9 MEDICAL PRACTICE; EMERGENCY REGULATORY  
10 ORDERS

11 ~~Through March 31, 2021~~ During a declared state of emergency in Vermont  
12 as a result of COVID-19 and for a period of three months following the  
13 termination of the state of emergency, the Director of Professional Regulation  
14 and the Commissioner of Health may issue such orders governing regulated  
15 professional activities and practices as may be necessary to protect the public  
16 health, safety, and welfare. If the Director or Commissioner finds that a  
17 professional practice, act, offering, therapy, or procedure by persons licensed  
18 or required to be licensed by Title 26 of the Vermont Statutes Annotated is  
19 exploitative, deceptive, or detrimental to the public health, safety, or welfare,  
20 or a combination of these, the Director or Commissioner may issue an order to  
21 cease and desist from the applicable activity, which, after reasonable efforts to

1 publicize or serve the order on the affected persons, shall be binding upon all  
2 persons licensed or required to be licensed by Title 26 of the Vermont Statutes  
3 Annotated, and a violation of the order shall subject the person or persons to  
4 professional discipline, may be a basis for injunction by the Superior Court,  
5 and shall be deemed a violation of 3 V.S.A. § 127.

6 \* \* \*

7 \* \* \* Telehealth \* \* \*

8 \* \* \*

9 Sec. 26. WAIVER OF CERTAIN TELEHEALTH REQUIREMENTS

10 ~~FOR A LIMITED TIME~~ DURING AND AFTER STATE OF  
11 EMERGENCY

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

19 (1) delivering health care services, including dental services, using a  
20 connection that complies with the requirements of the Health Insurance  
21 Portability and Accountability Act of 1996, Pub. L. No. 104-191 in accordance

1 with 8 V.S.A. § 4100k(i), as amended by this act, if it is not practicable to use  
2 such a connection under the circumstances;

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

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

13 \* \* \*

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

15 Sec. 14. OFFICE OF PROFESSIONAL REGULATION; TEMPORARY

16 LICENSURE **(OPR says no extension necessary – authority**

17 **codified in Act 91)**

18 Notwithstanding any provision of 3 V.S.A. § 129(a)(10) to the contrary,  
19 ~~through March 31, 2021~~ during a declared state of emergency in Vermont as a  
20 result of COVID-19 and for a period of three months following the termination  
21 of the state of emergency, a board or profession attached to the Office of

1 Professional Regulation may issue a temporary license to an individual who is  
2 a graduate of an approved education program if the licensing examination  
3 required for the individual’s profession is not reasonably available.

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

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

8 (a) Notwithstanding any provision of 26 V.S.A. § 1353(11) to the contrary,  
9 the Board of Medical Practice or its Executive Director may issue a temporary  
10 license ~~through March 31, 2021~~ during a declared state of emergency in  
11 Vermont as a result of COVID-19 and for a period of three months following  
12 the termination of the state of emergency to an individual who is licensed to  
13 practice as a physician, physician assistant, or podiatrist in another jurisdiction,  
14 whose license is in good standing, and who is not subject to disciplinary  
15 proceedings in any other jurisdiction. The temporary license shall authorize  
16 the holder to practice in Vermont until ~~a date not later than April 1, 2021~~ three  
17 months following the dates of the termination of the state of emergency,  
18 provided the licensee remains in good standing.

19 (b) ~~Through March 31, 2021~~ During a declared state of emergency in  
20 Vermont as a result of COVID-19 and for a period of three months following  
21 the termination of the state of emergency, the Board of Medical Practice or its



1 Executive Director may waive supervision and scope of practice requirements  
2 for physician assistants, including the requirement for documentation of the  
3 relationship between a physician assistant and a physician pursuant to  
4 26 V.S.A. § 1735a. The Board or Executive Director may impose limitations  
5 or conditions when granting a waiver under this subsection.

6 Sec. 4. 2020 Acts and Resolves No. 91, Sec. 8, as amended by 2020 Acts and  
7 Resolves No. 140, Sec. 13 and 2020 Acts and Resolves No. 159, Sec. 10, is  
8 further amended to read: **(moved to new section and updated per Act 159)**

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

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

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

20 ~~(A)~~ (A) expanding health insurance coverage for, and waiving or limiting  
21 cost-sharing requirements directly related to, the diagnosis of COVID-19,

1 including tests for influenza, pneumonia, and other respiratory viruses  
2 performed in connection with making a COVID-19 diagnosis; the treatment of  
3 COVID-19 when it is the primary or a secondary diagnosis; and the prevention  
4 of COVID-19; and

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

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

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

19 Sec. 5. 18 V.S.A. § 9721 is amended to read: **(for consideration)**

20 § 9721. ADVANCE DIRECTIVES; COVID-19 STATE OF EMERGENCY;

21 REMOTE WITNESSES AND EXPLAINERS

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\* \* \*

(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.

\* \* \*

1 Sec. 6. 18 V.S.A. § 1129 is amended to read: **(for consideration)**

2 § 1129. IMMUNIZATION REGISTRY

3 \* \* \*

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

9 \* \* \*

10 Sec. 7. EFFECTIVE DATE

11 This act shall take effect on passage.