

1 Introduced by Senate 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 certain  
6 provisions of 2020 Acts and Resolves Nos. 91 and 140 allowing for health  
7 care-related regulatory flexibility during and immediately following the  
8 COVID-19 pandemic. It would authorize the Department of Financial  
9 Regulation to adopt rules expanding patients' access to and providers'  
10 reimbursement for health care services delivered by telephone until January 1,  
11 2024. The bill would also allow remote witnesses for advance directives  
12 through June 30, 2022 and it would allow the Department of Health to provide  
13 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           Sec. 1. AGENCY OF HUMAN SERVICES; HEALTH CARE AND  
2   HUMAN SERVICE PROVIDER SUSTAINABILITY

3           ~~Through March 31, 2021~~ During a declared state of emergency in Vermont  
4           as a result of COVID-19 and for a period of three months following the  
5           termination of the state of emergency, the Agency of Human Services shall  
6           consider modifying existing rules or adopting emergency rules to protect  
7           access to health care services, long-term services and supports, and other  
8           human services under the Agency’s jurisdiction. In modifying or adopting  
9           rules, the Agency shall consider the importance of the financial viability of  
10          providers that rely on funding from the State, federal government, or Medicaid,  
11          or a combination of these, for a major portion of their revenue.

12   \* \* \*

13                                   \* \* \* Protections for Employees of Health Care Facilities and  
14   Human Service Providers \* \* \*

15          Sec. 3. PROTECTIONS FOR EMPLOYEES OF HEALTH CARE  
16   FACILITIES AND HUMAN SERVICE PROVIDERS

17          In order to protect employees of a health care facility or human service  
18          provider who are not licensed health care professionals from the risks  
19          associated with COVID-19, ~~through March 31, 2021~~ during a declared state of  
20          emergency in Vermont as a result of COVID-19 and for a period of three  
21          months following the termination of the state of emergency, all health care

1 facilities and human service providers in Vermont, including hospitals,  
2 federally qualified health centers, rural health clinics, residential treatment  
3 programs, homeless shelters, home- and community-based service providers,  
4 and long-term care facilities, shall follow guidance from the Vermont  
5 Department of Health regarding measures to address employee safety, to the  
6 extent feasible.

7 \* \* \* Compliance Flexibility \* \* \*

8 Sec. 4. HEALTH CARE AND HUMAN SERVICE PROVIDER

9 REGULATION; WAIVER OR VARIANCE PERMITTED

10 Notwithstanding any provision of the Agency of Human Services'  
11 administrative rules or standards to the contrary, ~~through March 31, 2021~~  
12 during a declared state of emergency in Vermont as a result of COVID-19 and  
13 for a period of three months following the termination of the state of  
14 emergency, the Secretary of Human Services may waive or permit variances  
15 from the following State rules and standards governing providers of health care  
16 services and human services as necessary to prioritize and maximize direct  
17 patient care, support children and families who receive benefits and services  
18 through the Department for Children and Families, and allow for continuation  
19 of operations with a reduced workforce and with flexible staffing arrangements  
20 that are responsive to evolving needs, to the extent such waivers or variances  
21 are permitted under federal law:

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

18 \* \* \*

1 Sec. 6. MEDICAID AND HEALTH INSURERS; PROVIDER

2 ENROLLMENT AND CREDENTIALING

3 ~~(a) Until **(three months following the termination of) [a date certain]**~~  
4 ~~**the last to terminate of a declared state of emergency in Vermont as a**~~  
5 ~~**result of COVID-19, a declared federal public health emergency as a**~~  
6 ~~**result of COVID-19, and a declared national emergency as a result of**~~  
7 ~~**COVID-19,**~~ and to the extent permitted under federal law, the Department of  
8 Vermont Health Access shall relax provider enrollment requirements for the  
9 Medicaid program, and the Department of Financial Regulation shall direct  
10 health insurers to relax provider credentialing requirements for health  
11 insurance plans, in order to allow for individual health care providers to deliver  
12 and be reimbursed for services provided across health care settings as needed  
13 to respond to Vermonters' evolving health care needs.

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

19 \* \* \*

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

21 \* \* \*

1 Sec. 9. PRESCRIPTION DRUGS; MAINTENANCE MEDICATIONS;

2 EARLY REFILLS

3 (a) As used in this section, “health insurance plan” means any health  
4 insurance policy or health benefit plan offered by a health insurer, as defined in  
5 18 V.S.A. § 9402. The term does not include policies or plans providing  
6 coverage for a specified disease or other limited benefit coverage.

7 (b) ~~Through June 30, 2021~~ During a declared state of emergency in  
8 Vermont as a result of COVID-19 and for a period of three months following  
9 the termination of the state of emergency, all health insurance plans and  
10 Vermont Medicaid shall allow their members to refill prescriptions for chronic  
11 maintenance medications early to enable the members to maintain a 30-day  
12 supply of each prescribed maintenance medication at home.

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

17 \* \* \*

18 Sec. 12. BUPRENORPHINE; PRESCRIPTION RENEWALS

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  
21 termination of the state of emergency, to the extent permitted under federal

1 law, a health care professional authorized to prescribe buprenorphine for  
2 treatment of substance use disorder may authorize renewal of a patient’s  
3 existing buprenorphine prescription without requiring an office visit.

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

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

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

12 \* \* \*

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

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

1 jurisdiction shall be deemed to be licensed, certified, or registered to provide  
2 health care services, including mental health services, to a patient located in  
3 Vermont using telehealth or as part of the staff of a licensed facility, provided  
4 the health care professional:

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

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

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

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

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

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



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

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

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

13 (a)(1) ~~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, a former health care professional,  
16 including a mental health professional, who retired not more than three years  
17 earlier with the individual’s Vermont license, certificate, or registration in  
18 good standing may provide health care services, including mental health  
19 services, to a patient located in Vermont using telehealth or as part of the staff  
20 of a licensed facility after submitting, or having submitted on the individual’s  
21 behalf, to the Board of Medical Practice or Office of Professional Regulation,

1 as applicable, the individual’s name, contact information, and the location or  
2 locations at which the individual will be practicing.

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

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

19 \* \* \*

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. 15 is amended to read:

15 Sec. 15. BOARD OF MEDICAL PRACTICE; TEMPORARY

16 PROVISIONS; PHYSICIANS, PHYSICIAN ASSISTANTS,

17 AND PODIATRISTS

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

1 the termination of the state of emergency to an individual who is licensed to  
2 practice as a physician, physician assistant, or podiatrist in another jurisdiction,  
3 whose license is in good standing, and who is not subject to disciplinary  
4 proceedings in any other jurisdiction. The temporary license shall authorize  
5 the holder to practice in Vermont until ~~a date~~ not later than ~~April 1, 2021~~ three  
6 months following the dates of the termination of the state of emergency,  
7 provided the licensee remains in good standing.

8 (b) ~~Through March 31, 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, the Board of Medical Practice or its  
11 Executive Director may waive **supervision and scope of practice**  
12 requirements for physician assistants, including **scope of practice**  
13 **requirements and** the requirement for documentation of the relationship  
14 between a physician assistant and a physician pursuant to 26 V.S.A. § 1735a.  
15 The Board or Executive Director may impose limitations or conditions when  
16 granting a waiver under this subsection.

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

20 Sec. 8. ACCESS TO HEALTH CARE SERVICES; DEPARTMENT OF  
21 FINANCIAL REGULATION; EMERGENCY RULEMAKING

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

4           (b)(1) ~~Until July 1, 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, and notwithstanding any provision of  
7 3 V.S.A. § 844 to the contrary, the Department of Financial Regulation shall  
8 consider adopting, and shall have the authority to adopt, emergency rules to  
9 address the following ~~through June 30, 2021~~:

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

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



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

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

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

12           § 9721. ADVANCE DIRECTIVES; COVID-19 STATE OF EMERGENCY;

13                           REMOTE WITNESSES AND EXPLAINERS

14   \* \* \*

15           (c)(1) Notwithstanding any provision of subsection 9703(b) of this title to  
16           the contrary, an advance directive executed by a principal between June 15,  
17           2020 and June 30, ~~2021~~ 2022 shall be deemed to be valid even if the principal  
18           signed the advance directive outside the physical presence of one or both of the  
19           required witnesses, provided all of the following conditions are met with  
20           respect to each remote witness:

21   \* \* \*

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

11 \* \* \*

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

13 § 1129. IMMUNIZATION REGISTRY

14 \* \* \*

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

20 \* \* \*

21 Sec. 6. EFFECTIVE DATE

1        This act shall take effect on passage.