

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           Sec. 1. AGENCY OF HUMAN SERVICES; HEALTH CARE AND  
2                               HUMAN SERVICE PROVIDER SUSTAINABILITY

3           Through March 31, ~~2021~~ 2022, the Agency of Human Services shall  
4           consider modifying existing rules or adopting emergency rules to protect  
5           access to health care services, long-term services and supports, and other  
6           human services under the Agency’s jurisdiction. In modifying or adopting  
7           rules, the Agency shall consider the importance of the financial viability of  
8           providers that rely on funding from the State, federal government, or Medicaid,  
9           or a combination of these, for a major portion of their revenue.

10   \* \* \*

11                       \* \* \* Protections for Employees of Health Care Facilities and  
12   Human Service Providers \* \* \*

13           Sec. 3. PROTECTIONS FOR EMPLOYEES OF HEALTH CARE  
14                               FACILITIES AND HUMAN SERVICE PROVIDERS

15           In order to protect employees of a health care facility or human service  
16           provider who are not licensed health care professionals from the risks  
17           associated with COVID-19, through March 31, ~~2021~~ 2022, 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, ~~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           (3) The Board of Medical Practice and Office of Professional  
2           Regulation shall provide appropriate notice of the March 31, 2022 expiration  
3           date of this section to:

4                   (A) health care professionals providing health care services under  
5           this section;

6                   (B) the Medical Reserve Corps; and

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

9           (b) Through March 31, ~~2021~~ 2022, 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~~ whose  
12          Vermont license, certificate, or registration became inactive more than three  
13          but less than 10 years earlier ~~with their Vermont license, certificate, or~~  
14          ~~registration~~ and was in good standing at the time it became inactive to return to  
15          the health care workforce on a temporary basis to provide health care services,  
16          including mental health services, to patients in Vermont. The Board of  
17          Medical Practice and Office of Professional Regulation may issue temporary  
18          licenses to these individuals at no charge and may impose limitations on the  
19          scope of practice of returning health care professionals as the Board or Office  
20          deems appropriate.

21

\* \* \*

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.

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

Sec. 26. WAIVER OF CERTAIN TELEHEALTH REQUIREMENTS  
FOR A LIMITED TIME

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;

(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

(3) **(end 60 days after end of state of emergency? HHC)** obtaining and documenting a patient’s oral or written informed consent for the use of

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.