

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.

21 * * *

1 * * * Telehealth * * *

2 * * *

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

5 Notwithstanding any provision of 8 V.S.A. § 4100k or 18 V.S.A. § 9361 to
6 the contrary, through March 31, ~~2021~~ 2022, the following provisions related to
7 the delivery of health care services through telemedicine or by store-and-
8 forward means shall not be required, to the extent their waiver is permitted by
9 federal law:

10 (1) delivering health care services, including dental services, using a
11 connection that complies with the requirements of the Health Insurance
12 Portability and Accountability Act of 1996, Pub. L. No. 104-191 in accordance
13 with 8 V.S.A. § 4100k(i), as amended by this act, if it is not practicable to use
14 such a connection under the circumstances;

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

20 (3) **(end 60 days after end of state of emergency? HHC**
21 **recommendation)** obtaining and documenting a patient's oral or written

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

5 * * *

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

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

10 (a) Notwithstanding any provision of 26 V.S.A. § 1353(11) to the contrary,
11 the Board of Medical Practice or its Executive Director may issue a temporary
12 license through March 31, ~~2021~~ 2022 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~~ 2022,
17 provided the licensee remains in good standing.

18 (b) Through March 31, ~~2021~~ 2022, the Board of Medical Practice or its
19 Executive Director may waive ~~supervision and scope of practice~~ requirements
20 for physician assistants, including scope of practice requirements and the
21 requirement for documentation of the relationship between a physician

1 assistant and a physician pursuant to 26 V.S.A. § 1735a. The Board or
2 Executive Director may impose limitations or conditions when granting a
3 waiver under this subsection.

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

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

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

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

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

1 (2)(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 ~~(3) expanding patients' access to and providers' reimbursement for
6 health care services, including preventive services, consultation services,
7 and services to new patients, delivered remotely through telehealth, audio-
8 only telephone, and brief telecommunication services.~~

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

11 Sec. 4. 8 V.S.A. chapter 107, subchapter 14 is amended to read:

12 Subchapter 14. ~~Telemedicine~~ Telehealth

13 * * *

14 § 4100I. COVERAGE OF HEALTH CARE SERVICES DELIVERED BY
15 AUDIO-ONLY TELEPHONE

16 (a) As used in this section:

17 (1) “Health care provider” means a person, partnership, or corporation,
18 other than a facility or institution, that is licensed, certified, or otherwise
19 authorized by law to provide professional health care services in this State to
20 an individual during that individual’s medical care, treatment, or confinement.

1 (2) “Health insurance plan” means any health insurance policy or health
2 benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402;
3 Medicaid, to the extent permitted by the Centers for Medicare and Medicaid
4 Services; and any other public health care assistance program offered or
5 administered by the State or by any subdivision or instrumentality of the State.
6 The term does not include policies or plans providing coverage for a specified
7 disease or other limited benefit coverage.

8 (b)(1) A health insurance plan shall provide coverage for all medically
9 necessary, clinically appropriate health care services delivered remotely by
10 audio-only telephone to the same extent that the plan would cover the services
11 if they were provided through in-person consultation. Services covered under
12 this subdivision shall include services that are covered when provided in the
13 home by home health agencies.

14 ~~**(2)(A) A health insurance plan shall provide the same**~~
15 ~~**reimbursement rate for services billed using equivalent procedure codes**~~
16 ~~**and modifiers, subject to the terms of the health insurance plan and**~~
17 ~~**provider contract, regardless of whether the service was provided through**~~
18 ~~**in-person consultation with a health care provider or by audio-only**~~
19 ~~**telephone.**~~

20 ~~**(B) The provisions of subdivision (A) of this subdivision (2) shall**~~
21 ~~**not apply in the event that a health insurer and health care provider enter**~~

1 into a value-based contract for health care services that include audio-only
2 telephone services.

3 (2) A health insurance plan may charge an otherwise permissible
4 deductible, co-payment, or coinsurance for a health care service delivered by
5 audio-only telephone provided that it does not exceed the deductible, co-
6 payment, or coinsurance applicable to an in-person consultation.

7 (3) A health insurance plan shall not require a health care provider to
8 have an existing relationship with a patient in order to be reimbursed for health
9 care services delivered by audio-only telephone.

10 Sec. 5. 18 V.S.A. chapter 219 is amended to read:

11 CHAPTER 219. HEALTH INFORMATION TECHNOLOGY AND
12 ~~TELEMEDICINE~~ TELEHEALTH

13 * * *

14 Subchapter 2. ~~Telemedicine~~ Telehealth

15 * * *

16 § 9362. HEALTH CARE PROVIDERS DELIVERING HEALTH CARE
17 SERVICES BY AUDIO-ONLY TELEPHONE

18 (a) As used in this section, “health insurance plan” and “health care
19 provider” have the same meaning as in 8 V.S.A. § 4100l and “telemedicine”
20 has the same meaning as in 8 V.S.A. § 4100k.

1 (b)(1) Subject to the limitations of the license under which the individual is
2 practicing and, for Medicaid patients, to the extent permitted by the Centers for
3 Medicare and Medicaid Services, a health care provider may deliver health
4 care services to a patient using audio-only telephone if the patient elects to
5 receive the services in this manner and it is clinically appropriate to do so. A
6 health care provider shall comply with any training requirements imposed by
7 the provider’s licensing board on the appropriate use of audio-only telephone
8 in health care delivery.

9 (2) A health care provider delivering health care services using audio-
10 only telephone shall include or document in the patient’s medical record:

11 (A) the patient’s informed consent for receiving services using audio-
12 only telephone in accordance with subsection (c) of this section; and

13 (B) the reason or reasons that the provider determined that it was
14 clinically appropriate to deliver health care services to the patient by audio-
15 only telephone.

16 (3)(A) A health care provider shall not require a patient to receive health
17 care services by audio-only telephone if the patient does not wish to receive
18 services in this manner.

19 (B) A health care provider shall deliver care that is timely and
20 complies with contractual requirements and shall not delay care unnecessarily

1 if a patient elects to receive services through an in-person visit or telemedicine
2 instead of by audio-only telephone.

3 (c) A health care provider delivering health care services by audio-only
4 telephone shall obtain and document a patient’s oral or written informed
5 consent for the use of audio-only telephone prior to the appointment or at the
6 start of the appointment but prior to delivering any billable service.

7 (1) The informed consent for audio-only telephone services shall be
8 provided in accordance with Vermont and national policies and guidelines on
9 the appropriate use of telephone services within the provider’s profession and
10 shall include, in language that patients can easily understand:

11 (A) that the patient is entitled to choose to receive services by audio-
12 only telephone, in person, or through telemedicine, to the extent clinically
13 appropriate;

14 (B) that receiving services by audio-only telephone does not preclude
15 the patient from receiving services in person or through telemedicine at a later
16 date;

17 (C) an explanation of the opportunities and limitations of delivering
18 and receiving health care services using audio-only telephone;

19 (D) informing the patient of the presence of any other individual who
20 will be participating in or listening to the patient’s consultation with the

1 provider and obtaining the patient’s permission for the participation or
2 observation; **and**

3 (E) whether the services will be billed to the patient’s health
4 insurance plan if delivered by audio-only telephone and what this may mean
5 for the patient’s financial responsibility for co-payments, coinsurance, and
6 deductibles; **and**

7 **(F) informing the patient that not all audio-only health care**
8 **services are covered by all health plans (DFR recommendation).**

9 (2) For services delivered by audio-only telephone on an ongoing basis,
10 the health care provider shall be required to obtain consent only at the first
11 episode of care.

12 (3) If the patient provides oral informed consent, the provider shall offer
13 to provide the patient with a written copy of the informed consent.

14 (4) Notwithstanding any provision of this subsection to the contrary, a
15 health care provider shall not be required to obtain a patient’s informed
16 consent for the use of audio-only telephone services in the case of a medical
17 emergency.

18 (5) A health care provider may use a single informed consent form to
19 address all telehealth modalities, including telemedicine, store and forward,
20 and audio-only telephone, as long as the form complies with the provisions of
21 section 9361 of this chapter and this section.

1 (d) Neither a health care provider nor a patient shall create or cause to be
2 created a recording of a provider’s telephone consultation with a patient.

3 (e) Audio-only telephone services shall not be used in the following
4 circumstances:

5 (1) for the second certification of an emergency examination
6 determining whether an individual is a person in need of treatment pursuant to
7 section 7508 of this title; or

8 (2) for a psychiatrist’s examination to determine whether an individual
9 is in need of inpatient hospitalization pursuant to 13 V.S.A. § 4815(g)(3).

10 Sec. 6. AUDIO-ONLY TELEPHONE; MEDICAL BILLING; DATA
11 COLLECTION; REPORT

12 (a)(1) On or before July 1, 2021, the Department of Financial Regulation,
13 in consultation with the Department of Vermont Health Access, the Green
14 Mountain Care Board, representatives of health care providers, health insurers,
15 and other interested stakeholders, shall determine the appropriate codes or
16 modifiers, or both, to be used by providers and insurers, including Vermont
17 Medicaid to the extent permitted by the Centers for Medicare and Medicaid
18 Services, in the billing of and payment for health care services delivered using
19 audio-only telephone in order to allow for consistent data collection **by**
20 **insurers, maintain reimbursement rates equal to those for in-person**
21 **services**, identify appropriate codes for services that do not have in-person

1 equivalents, and minimize the administrative burden on providers. To the
2 extent possible, the use of codes or modifiers, or both, shall be done in a
3 manner that allows data on the use of audio-only telephone services to be
4 identified using the Vermont Healthcare Claims Uniform Reporting and
5 Evaluation System (VHCURES).

6 (2) Not later than January 1, 2022, all Vermont-licensed health care
7 providers and health insurers offering **major medical** health insurance plans in
8 Vermont shall use the codes and modifiers determined by the Department of
9 Financial Regulation pursuant to subdivision (1) of this subsection when
10 delivering services by audio-only telephone. Vermont Medicaid shall
11 participate to the extent permitted by the Centers for Medicare and Medicaid
12 Services.

13 (b) On or before December 1, 2023, the Department of Financial
14 Regulation, the Vermont Program for Quality in Health Care, and, to the extent
15 VHCURES data are available, the Green Mountain Care Board shall present
16 information to the House Committee on Health Care and the Senate Committee
17 on Health and Welfare regarding the use of audio-only telephone services in
18 Vermont during calendar year 2022. The Department shall consult with
19 interested stakeholders in order to include in its presentation information on
20 utilization of audio-only telephone services, quality of care, patient satisfaction
21 with receiving health care services by audio-only telephone, **and the**

1 advantages and disadvantages of reimbursing providers the same amounts
2 for services delivered in person and by audio-only telephone the impacts
3 of coverage of audio-only telephone services on health care costs and on
4 access to health care services, and how best to incorporate audio-only
5 telephone services into value-based payments.

6 **Sec. 7. AUDIO-ONLY TELEPHONE REIMBURSEMENT AMOUNTS**

7 **FOR PLAN YEARS 2022, 2023, AND 2024**

8 The Department of Financial Regulation, in consultation with the
9 Department of Vermont Health Access, the Green Mountain Care Board,
10 representatives of health care providers, health insurers, and other
11 interested stakeholders, shall determine the amounts that health insurance
12 plans shall reimburse health care providers for delivering health care
13 services by audio-only telephone during plan years 2022, 2023, and 2024.

14 The Department may determine different reimbursement amounts for
15 different types of services and may modify the rates that will apply in
16 different plan years as appropriate, but shall finalize its determinations
17 not later than April 1 for plan years after 2022.

18 Sec. 8. TELEPHONE TRIAGE SERVICES; DEPARTMENT OF

19 FINANCIAL REGULATION; EMERGENCY RULEMAKING

20 Notwithstanding any provision of 3 V.S.A. § 844 to the contrary, the
21 Department of Financial Regulation shall consider adopting, and shall have the

1 authority to adopt, emergency rules to address health insurance coverage of
2 and reimbursement for telephone calls used to determine whether an office
3 visit or other service is needed. Emergency rules adopted pursuant to this
4 section shall remain in effect until not later than April 1, 2022.

5 Sec. 9. 8 V.S.A. § 4100k(a)(2) is amended to read:

6 (2)(A) A health insurance plan shall provide the same reimbursement
7 rate for services billed using equivalent procedure codes and modifiers, subject
8 to the terms of the health insurance plan and provider contract, regardless of
9 whether the service was provided through an in-person visit with the health
10 care provider or through telemedicine.

11 (B) The provisions of subdivision (A) of this subdivision (2) shall not
12 apply:

13 (i) to services provided pursuant to the health insurance plan's
14 contract with a third-party telemedicine vendor to provide health care or dental
15 services; or

16 (ii) in the event that a health insurer and health care provider enter
17 into a value-based contract for health care services that include **care delivered**
18 **through** telemedicine or by store-and-forward means.

19 **Sec. 6. AUDIO-ONLY TELEPHONE REIMBURSEMENT PARITY;**

20 **REPEAL**

1 ~~§ V.S.A. § 4100(b)(2) (audio-only telephone reimbursement parity) is~~
2 ~~repealed on January 1, 2025.~~

3 Sec. 10. 18 V.S.A. § 9721 is amended to read:

4 § 9721. ADVANCE DIRECTIVES; COVID-19 STATE OF EMERGENCY;

5 REMOTE WITNESSES AND EXPLAINERS

6 * * *

7 (c)(1) Notwithstanding any provision of subsection 9703(b) of this title to
8 the contrary, an advance directive executed by a principal between June 15,
9 2020 and June 30, ~~2021~~ 2022 shall be deemed to be valid even if the principal
10 signed the advance directive outside the physical presence of one or both of the
11 required witnesses, provided all of the following conditions are met with
12 respect to each remote witness:

13 * * *

14 (d)(1) Notwithstanding any provision of subsection 9703(d) or (e) of this
15 title to the contrary, an advance directive executed by a principal between
16 February 15, 2020 and June 30, ~~2021~~ 2022 while the principal was being
17 admitted to or was a resident of a nursing home or residential care facility or
18 was being admitted to or was a patient in a hospital shall be deemed to be valid
19 even if the individual who explained the nature and effect of the advance
20 directive to the principal in accordance with subsection 9703(d) or (e) of this
21 title, as applicable, was not physically present in the same location as the

1 principal at the time of the explanation, provided the individual delivering the
2 explanation was communicating with the principal by video or telephone.

3 * * *

4 Sec. 11. 18 V.S.A. § 1129 is amended to read:

5 § 1129. IMMUNIZATION REGISTRY

6 (a) A health care provider shall report to the Department all data regarding
7 immunizations of adults and of children under 18 years of age within seven
8 days of the immunization, provided that required reporting of immunizations
9 of adults shall commence within one month after the health care provider has
10 established an electronic health records system and data interface pursuant to
11 the e-health standards developed by the Vermont Information Technology
12 Leaders. A health insurer shall report to the Department all data regarding
13 immunizations of adults and of children under 18 years of age at least
14 quarterly. All data required pursuant to this subsection shall be reported in a
15 format required by the Department.

16 (b) The Department may use the data to create a registry of immunizations.
17 Registry information shall remain confidential and privileged, except as
18 provided in subsections (c) and (d) of this section. Registry information
19 regarding a particular adult shall be provided, upon request, to the adult, the
20 adult's health care provider, and the adult's health insurer. Registry
21 information regarding a particular minor child may be provided, upon request,

1 to school nurses, or in the absence of a nurse on staff, administrators, and upon
2 request and with written parental consent, to licensed day care providers, to
3 document compliance with Vermont immunization laws. Registry information
4 regarding a particular child shall be provided, upon request to the minor child’s
5 parent or guardian, health insurer, and health care provider, or to the child after
6 the child reaches the age of majority.

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

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

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

20 * * *

21 Sec. 12. EFFECTIVE DATE

1 This act shall take effect on passage.