New Vermont Law Extends Temporary Licensure and Registration Options for Out-of-State Providers, Including for Telehealth

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On March 29, 2023, the Vermont legislature passed Act 4 (H.411), extending certain health care regulatory flexibilities enacted amidst the Covid-19 pandemic. This law extends temporary licensure and registration processes enabling providers licensed or registered in other states to provide telehealth or in-person care to Vermont patients. Vermont's temporary telehealth registration will remain available to out-of-state providers indefinitely until the state's permanent telehealth licensure and registration system (set out in a May 2022 law) is operational.

What was the previous framework for care by out-of-state providers in Vermont?

Throughout 2022, the Vermont legislature enacted several iterative pieces of legislation to enable out-of-state providers to treat Vermont patients, both in person within Vermont and via telehealth.

In March, 2022, the Vermont legislature passed Act 85 (H. 654), requiring out-of-state providers not licensed or registered in Vermont to register with the appropriate professional board before treating Vermont patients via telehealth, and establishing a procedure for such providers to obtain a **temporary telehealth registration**. These temporary registrations were to be valid only until June 30, 2023.

To further address the state's longstanding health care provider shortages, this law also set out pathways for providers licensed or registered in another jurisdiction to provide care to Vermonters within the state. First, the law allowed a health care professional, including a mental health professional, who holds a valid license, certificate, or registration in good standing from another jurisdiction to be **deemed licensed, certified, or registered** to provide in-person care to a patient located in Vermont for six months or less. Similarly, the Act allowed the Board of Medical Practice to issue a **temporary license** to individuals licensed in good standing in another jurisdiction to practice as a physician, physician assistant or podiatrist in Vermont. Both of these provisions were set to expire (but did not) on March 31, 2023.

Subsequently, as our Digital Health team reported last year, in May 2022 the Vermont legislature passed Act 107 (H.655), which established **permanent telehealth licensure and registration requirements and processes** to enable health professionals with an out-of-state license to treat patients located in Vermont. The Act's requirements, processes, and supporting regulations were slated to take effect on July 1, 2023.

What is Act 4?

Act 4 extends and amends aspects of the March 2022 law to maintain health care regulatory flexibilities involving licensure and certain scope of practice issues. Beyond the specific extensions most pertinent to out-of-state providers (discussed below), the Act's provisions include:

- Delaying the application of in-person exam requirements when prescribing buprenorphine; [i]
- Extending "relax[ed]" provider enrollment and credentialing requirements for the Medicaid program and other health insurance plans; and

- Continuing to authorize the Department of Financial Regulation to adopt emergency rules expanding health coverage and waiving or limiting of cost sharing requirements directly related to the diagnosis, treatment, and prevention of Covid-19.[ii]

How does Act 4 impact out-of-state providers treating Vermont patients via telehealth and/or in person within Vermont?

First, Act 4 indefinitely extends the **temporary telehealth registration** established in 2022. The law specifies that the temporary telehealth registration option will continue to be available to out-of-state health care professionals until the permanent telehealth licensure and registration system established in the May 2022 law (Act 107) is operational.

Additionally, Act 4 extends through March 31, 2024 and clarifies the March 2022 provisions deeming qualified health care professionals holding a valid license, certificate, or registration in any other U.S. jurisdiction to be **licensed, certified, or registered** to provide health care services to a patient located in Vermont for no more than six months. The 2023 Act specifically provides that health care facilities, health insurers, and Vermont Medicaid must consider this deemed licensure, certification, or registration sufficient to meet applicable Vermont requirements for the purpose of professional credentialing and enrollment.

The Law also extends through March 31, 2024 the Board of Medical Practice's authorization to issue **temporary licenses** to practice in Vermont to qualifying individuals licensed to practice as a physician, physician assistant, or podiatrist in another jurisdiction.

Finally, the 2023 law extends through March 31, 2024 Vermont's enforcement discretion concerning state laws requiring providers to deliver telehealth services through a connection that complies with the Health Insurance Portability and Accountability Act (HIPAA) and Vermont law.[iii]

[i] This is entirely independent of federal remote prescribing laws, which are expected to change by late 2023.

[ii] In contrast with the 2022 Law, the 2023 Act eliminates the Department of Financial Regulation's authority to adopt emergency rules modifying or suspending health insurance plan deductible requirements for prescription drugs.

[iii] Vermont law notwithstanding, with the end of the federal Public Health Emergency on May 11, 2023, the U.S. Department of Health and Human Services' Office of Civil Rights discontinued its enforcement discretion of, and may now impose penalties for, noncompliance with similar requirements in HIPAA and its implementing regulations. For more information, see our Digital Health team's March 2023 Report regarding the end of the federal Public Health Emergency.

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