

# Vermont Passes H. 655, Establishes Out-of-State Telehealth Licensure and Registration, New Digital Health Definitions

Insights

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Vermont lawmakers recently passed legislation paving the way for two permanent pathways that enable health care professionals with an out-of-state license to treat patients located in Vermont via telehealth.

As discussed below, an Interim Telehealth Registration process in place until June 2023 currently allows out-of-state health care professionals to treat patients in Vermont without full Vermont licensure. H. 655, however, introduces a new chapter of Vermont's Professions and Occupations statutes entitled, "Telehealth Licensure and Registration for Out-of-State Health Care Professionals" which establishes permanent telehealth licensure and registration processes for out-of-state health care professionals effective in 2023.

Below is a brief overview of the interim process currently in place in Vermont for out-of-state providers, followed by a summary of the most important takeaways from H. 655 for stakeholders in New England and beyond.

## The Big Picture – Why is H. 655 Necessary?

During the COVID-19 pandemic, interstate telehealth practice has become exceedingly common, particularly in regions like New England where many people cross state lines on a daily basis. However, current Vermont law generally requires providers treating patients in Vermont to hold a Vermont license, regardless of where the provider is located, except in certain narrow circumstances.<sup>[1]</sup>

After the Vermont legislature passed legislation earlier in 2022 requiring providers not licensed in Vermont to register with the appropriate professional board before treating Vermont patients, temporary registration processes were established for non-Vermont-licensed providers by the Vermont Board of Medical Practice, which regulates allopathic physicians, physician assistants and podiatrists, and the Vermont Office of Professions, which regulates a broader range of health care professionals including osteopathic physicians, psychologists, nurses and social workers, respectively.<sup>[2]</sup>

However, those registration processes are only valid until June 30, 2023, at which time out-of-state health care professionals will need to hold a full Vermont license, or obtain a telehealth license or telehealth registration from the appropriate Vermont board. We outline the details

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of those permanent license and registration processes, as well as some material scope of practice details addressing the utilization of telehealth in Vermont moving forward, below.

### **What Does H. 655 Mean for Out-of-State Providers? Licensure vs. Registration.**

H. 655 outlines two avenues for health care professionals (which term is outlined below) licensed in good standing in any other U.S. jurisdiction to provide “health care services” to patients located in Vermont without obtaining full Vermont licensure after June 30, 2023: telehealth licensure and telehealth registration. Services furnished by health care professionals under a telehealth license or registration must be within their scope of practice, and are subject to the same standard of care as services furnished in-person in Vermont. To be considered licensed in good standing, an out-of-state health care professional cannot be subject to a pending disciplinary investigation or action in any other U.S. jurisdiction.

#### *Term.*

- Vermont telehealth licenses are valid for two years and are renewable.
- Telehealth registrations are valid for 120 days and cannot be renewed.

*Limited Numbers of Patients, Not Encounters.* Both the license and registration limit the number of “unique patients or clients” located in Vermont that an out-of-state practitioner can treat. Note that neither the license nor the registration has limits on the *amount* of health care services that can be provided to those patients or clients while the license or registration is valid.

- The telehealth license allows health care professionals to provide health care services to up to 20 “unique patients or clients” during the two-year term.
- The telehealth registration allows health care professionals to treat up to 10 patients or clients during its 120 day term.

*No Physical Presence in Vermont.* Health care professionals treating patients or clients in Vermont via telehealth under a telehealth license or registration cannot treat patients in-person in Vermont or open an office in Vermont.

### **Who Will Be Eligible for the Telehealth Licensure and Registration?**

H. 655 applies to more than two dozen provider types and professions (collectively, “health care professionals”) regulated by either the Board of Medical Practice or Office of Professional Regulation, including physicians, physician assistants, nurses, psychologists, and social workers. The full list will be codified at 26 V.S.A. § 3051.

### **Are There Situations When Neither Licensure nor Registration Will Be Required in Vermont?**

H.655 provides a narrow exception to both the licensure and registration requirement for health care professionals licensed and in good standing in any other U.S. jurisdiction when consulting with health care professionals in Vermont to assist the Vermont-based health care professional in treating their patient.

Specifically, H.655 states that “[a] health care professional is not required to obtain a telehealth registration or licensure solely to provide consultation services to another health care professional regarding care for a patient or client located in Vermont, provided the consulting health care professional holds a license, certificate, or registration to practice the profession in one or more U.S. jurisdictions and the consultation is based on a review of records without in-person or remote contact between the consulting health care professional and the patient or client.”

While the limited exception above only applies to consultations involving records review and *not* to synchronous audio-video or audio-only consults between out-of-state health care professionals and Vermont licensees, Vermont law already contains a statutory exception to its licensure requirement for any nonresident physician “using telecommunications to consult with a duly licensed practitioner [in Vermont].”<sup>[3]</sup>

### **Telehealth vs. Telemedicine, Clarity on Telehealth Modalities**

Most details regarding scope of practice requirements for health care professionals treating patients in Vermont will largely be forthcoming in the regulations accompanying the telehealth licensure and registration processes when they are established in 2023. However, H. 655 establishes definitions of “telemedicine,” “telehealth,” and “store-and-forward technology” which provide some detail about what modalities can be utilized to provide care via telehealth in Vermont moving forward.

*Telemedicine.* “Telemedicine” is defined as “the delivery of health care services ...through the use of live interactive audio and video ...” That definition is consistent with the approach the Vermont Board of Medical Practice enacted in its “Policy on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine,” where the definition of telemedicine states, in relevant part, “[g]enerally, telemedicine is not an audio-only, telephone conversation, email/instant messaging conversation, or fax.”<sup>[4]</sup>

*Telehealth.* “Telehealth” is defined more expansively than “telemedicine,” as “health care services delivered by telemedicine, store and forward, or audio-only telephone.” Importantly, H. 655 uses the term “telehealth,” *not* “telemedicine,” in establishing the licensure and registration processes discussed above. In fact, the term “telemedicine” does not appear in H.655 outside of the definitions of “telemedicine” and “telehealth.” Thus, the telehealth licensure and registration processes appear to permit the provision of health care services via audio-only technology as well as store-and-forward technology (defined below), assuming the applicable standard of care is satisfied.

*Store and Forward.* H.655 includes a new definition of “store and forward,” which means “an asynchronous transmission of medical information, such as one or more video clips, audio clips, still images, x-rays, magnetic resonance imaging scans, electrocardiograms, electroencephalograms, or laboratory results, sent over a secure connection that complies with the requirements of [HIPAA] to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty. In store and forward, the health care provider at the distant site reviews the medical information without the patient present in real time and communicates a care plan or treatment recommendation back to the patient or referring provider, or both.”

### How Does the Process Work?

Applications for telehealth licensure and registration are not yet available, but are expected to be accessible through the websites of Vermont’s Board of Medical Practice and Office of Professional Regulation in time for the July 1, 2023 effective date. Further details are expected to be included in implementing regulations establishing the telehealth licensure and registration processes.

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*Hooper, Lundy & Bookman’s Digital Health Team actively monitors telehealth developments relevant to our health care provider and supplier clients nationwide. For further information, please contact [Melania Jankowski](#) or [Jeremy Sherer](#) in Boston, [Andrea Frey](#) in San Francisco, or any other member of our Hooper, Lundy & Bookman team.*

[1] See, e.g., [26 V.S.A. § 1314](#).

[2] Vermont Board of Medical Practice, [Temporary Telehealth Registration](#); Vermont Office of Professions, [Interim Telehealth Registration](#).

[3] [26 V.S.A. § 1313\(a\)\(3\)](#).

[4] Vermont Board of Medical Practice, “[Policy on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine](#).”

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