



State of Vermont
Office of the Secretary of State

Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402
sos.vermont.gov

James C. Condos, Secretary of State
Christopher D. Winters, Deputy Secretary
S. Lauren Hibbert, Director

To: Health Care Professionals
From: G. Gilman, General Counsel
L. Layman, Staff Attorney
Office of Professional Regulation
Date: March 20, 2020
Re: Telehealth Services

The Vermont General Assembly recently passed legislation, H. 742, that expands access to health care services provided through telehealth and telemedicine. This guidance provides additional information about the new law and how it impacts current Vermont and out-of-state licensees and recent retirees.

Health Care Providers

A health care provider means “a person, partnership, or corporation, other than a facility or institution, that is licensed, certified, or otherwise authorized by law to provide professional health care services, including dental services, in this State to an individual during that individual’s medical care, treatment, or confinement.” [8 V.S.A. § 4100k\(i\)\(4\)](#) and H. 742, Section 24(i)(4). The following health care professionals licensed by the Vermont Office of Professional Regulation (“OPR”) may provide telehealth services subject to Vermont’s laws:

- Audiologists
- Chiropractors
- Dentists and dental hygienists
- Dieticians
- Mental health care providers including
 - Licensed clinical mental health counselors
 - Marriage and family therapists
 - Rostered psychotherapists who are noncertified or nonlicensed
 - Alcohol and drug counselors, both licensed and certified
 - Psychoanalysts
 - Psychologists
 - Licensed independent clinical social workers
- Midwives
- Nurses
- Occupational therapists
- Opticians
- Optometrists
- Osteopathic physicians
- Pharmacists
- Physical therapists
- Radiologic Technologists
- Respiratory care practitioners
- Speech-Language Pathologists

Licensure Questions

Under previous Vermont law, only those health care providers holding a license in Vermont could provide telehealth (also known as telemedicine) services to patients in Vermont. H. 742 amends this law to permit health care providers from other states and certain retirees to provide telehealth services to Vermonters under the following circumstances:

- *Out-of-State Licensees*
 - Health care providers, including mental health care providers, who hold a license, in good standing, in another U.S. jurisdiction may provide telehealth services to Vermonters without obtaining a license to practice in Vermont. Under H. 742, such health providers are “deemed” licensed, registered or certified in Vermont to provide health care services to Vermonters.
 - The health care provider’s license from the other U.S. jurisdiction must be in good standing and there must not be any disciplinary action pending against the license. Further, the health care provider must not be affirmatively barred from practice in Vermont by reason of fraud or abuse, patient care or public safety.

- *Health Care Professionals Retired for **No Longer than 3 Years***
 - Health care providers who retired no more than three years ago, whose license was in good standing upon retirement, may provide health care services through telehealth or with a specific health care facility during the COVID-19 state of emergency.
 - Such health care providers are not required to obtain or renew a license. *However*, health care providers retired three years or less who wish to provide telehealth services during the COVID-19 state of emergency must submit the following information to OPR through our website:
 - Name
 - Contact information
 - Location of practice or statement that services will be provided through telehealth

- *Health Care Professionals Retired for **More than 3 Years but Less Than 10 Years***
 - Health care providers who retired more than three years ago, but fewer than 10 years ago, must obtain a temporary license from OPR to return to practice, through telehealth or other methods, during the COVID-19 state of emergency.
 - The health care provider’s license must have been in good standing when the provider retired.
 - The health care provider must apply for a temporary license through OPR’s website. Instructions for obtaining a temporary license can be found [here](#). There is no cost for this temporary license. This temporary license is valid for 90 days or through the end of the COVID-19 state of emergency, whichever period ends first. If the duration of the COVID-19 state of emergency exceeds 90 days, temporary license holders may apply for another temporary license.

All health care providers, including those licensed in other U.S. jurisdictions, are subject to the jurisdiction and authority of the Vermont Office of Professional Regulation and to all Vermont laws and regulations pertaining to the practice of that health care profession while providing telehealth services to Vermonters. Health care providers engaging in telehealth practice shall provide only those services that are permitted within the scope of practice for that profession as set forth in Vermont’s laws.

The authority to provide telehealth services to Vermonters without first obtaining a Vermont license is effective only for the duration of the COVID-19 state of emergency. Once the emergency is concluded, the previous law, requiring licensure in Vermont to provide telehealth services to Vermonters, will, again, take effect.

Provision of Telehealth Services

H. 742 suspends the application of certain requirements for the practice of telehealth for the duration of the COVID-19 state of emergency. The following requirements are suspended or modified:

- *Permitted Types of Communication Expanded*
 - Under existing laws, telehealth must occur over live, interactive audio and video.
 - H. 742 allows the use of audio-only telephone, email and facsimile to perform telehealth services.
 - The U.S. Department of Health and Human Services' Office of Civil Rights ("OCR") issued guidance stating that health care providers "can use any non-public facing remote communication product that is available to communicate with patients."

- *HIPAA Compliance*
 - Under existing laws, telehealth must occur over secure connection that complies with HIPAA requirements.
 - Based on federal guidance and H. 742, Vermont health care providers must make a good faith attempt at providing HIPAA-compliant telehealth services. If doing so is not practicable under the circumstances, the health care provider will not be prosecuted.
 - H. 742 allows the delivery of health care services using a connection that is not compliant with HIPAA
 - To the extent such a waiver is compliant with federal law, and
 - Provided that use of a HIPAA-compliant secure connection is not practicable under the circumstances.
 - OCR, the federal office charged with enforcing compliance with HIPAA, has issued guidance stating that it will not impose penalties "for noncompliance with the regulatory requirements under the HIPAA Rules...in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency." Thus, HIPAA requirements for secure connections are not being enforced at this time.

- *Informed Consent*
 - Under existing law, a health care provider must obtain and document a patient's oral and written consent for the use of telehealth prior to providing telehealth services.
 - During the COVID-19 state of emergency, if obtaining and documenting oral and/or written consent for the use of telehealth prior to the provision of telehealth services is impracticable under the circumstances, health care providers may obtain such a consent after the provision of the services or at a later date. Such a consent must still comply with the requirements of 18 V.S.A. § 9361(c) when obtained.