

EXHIBIT D-1

STATE MEDICAL BOARD

SUBJECT: Amendment to Regulation 2.8; Governing Physician/Patient Relationships

DESCRIPTION: This amends the establishment of the patient physician relationship to allow for using real time audio visual telemedicine technology.

PUBLIC COMMENT: A public hearing was held on June 9, 2016, and the public comment period expired on that date. No public comments were submitted.

Jessica Sutton, an attorney with the Bureau of Legislative Research, asked the following question:

Regarding the changes in Regulation 2.8, a proper physician/patient relationship could now include a face to face examination using real time audio and visual telemedicine technology that provides information at least equal to such information as would have been obtained by an in-person examination. Arkansas Code Annotated § 17-80-118 provides the definition of a “professional relationship” and states that a health professional at a distant site shall not utilize telemedicine with respect to a patient located in Arkansas unless a professional relationship exists between the healthcare professional and the patient or the healthcare professional otherwise meets the requirements of professional relationship as defined in § 17-80-118(a)(4). Therefore, it seems as though a professional relationship has to exist prior to telemedicine being used; however, the rules seem to suggest that the practice of telemedicine can be a basis for establishing a professional relationship. Can you clear this up for me? **RESPONSE:** You are correct. This rule change does not alter the distant site issue. Under § 17-80-118(a)(4)(F), a relationship exists in other circumstances as defined by rule of a licensing or certification board for other healthcare professionals under the jurisdiction of the appropriate board and their patients if the rules are no less restrictive than the rules of the Arkansas State Medical Board.

The proposed effective date is August 1, 2016.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: These rules implement Act 887 of 2015, the “Telemedicine Act.” This act required state licensing and certification boards for healthcare professionals to amend their rules where necessary to comply with the act.

July 16
2016

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

RECEIVED

DEPARTMENT/AGENCY Arkansas State Medical Board

DIVISION _____

DIVISION DIRECTOR Peggy Pryor Cryer, Executive Secretary

CONTACT PERSON Kevin M. O'Dwyer, Attorney

ADDRESS 211 S. Spring Street, Little Rock, AR 72201

PHONE NO. 501-372-4144 FAX NO. 501-372-7480 E-MAIL kodwyer@htolaw.com

NAME OF PRESENTER AT COMMITTEE MEETING Kevin M. O'Dwyer

PRESENTER E-MAIL _____

APR 29 2016

BUREAU OF
LEGISLATIVE RESEARCH

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
 Administrative Rules Review Section
 Arkansas Legislative Council
 Bureau of Legislative Research
 One Capitol Mall, 5th Floor
 Little Rock, AR 72201

1. What is the short title of this rule? Amendment to Regulation 2.8, Governing Physician/Patient Relationships

2. What is the subject of the proposed rule? To amend the establishment of the patient physician relationship to allow for using real time audio visual telemedicine technology

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
 If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
 If yes, what is the effective date of the emergency rule? N/A

When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. §17-95-303 (2)

7. What is the purpose of this proposed rule? Why is it necessary? There have been changes in the definition of physician/patient relationships

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.armedicalboard.org

9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: 9 June 2016
Time: 8:30 a.m.
Offices of the Arkansas State Medical Board, 1401 W. Capitol Ave. Suite 340,
Place: Little Rock AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
9 June 2016

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
1 August 2016

12. Do you expect this rule to be controversial? Yes No
If yes, please explain. _____

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.
Arkansas Medical Society; Arkansas Osteopathic Association

FINANCIAL IMPACT STATEMENT

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PLEASE ANSWER ALL QUESTIONS COMPLETELY

APR 29 2016

DEPARTMENT Arkansas State Medical Board
DIVISION _____

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PERSON COMPLETING THIS STATEMENT Kevin M. O'Dwyer, Attorney

TELEPHONE NO. 501-372-4144 FAX NO. 501-372-7480 EMAIL: kodwyer@htolaw.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Amendment to Regulation 2.8, Governing Physician/Patient Relationships

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;
N/A

(b) The reason for adoption of the more costly rule;
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue N/A
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

General Revenue N/A
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue N/A

General Revenue N/A

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
 - (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

SUMMARY

Amendment to Regulation 2.8

To amend the establishment of the patient physician relationship to allow for using real time audio visual telemedicine technology.

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