

## STATE MEDICAL BOARD

**SUBJECT:** Regulation 38; Governing Telemedicine

**DESCRIPTION:** This establishes a requirement for physicians to provide telemedicine services.

**PUBLIC COMMENT:** A public hearing was held on June 9, 2016, and the public comment period expired on that date.

Letters of support were received from the Arkansas Medical Society and a letter in support with the following signatures: Arkansas State Chamber of Commerce Associated Industries of Arkansas, Inc., Arkansas Trucking Association, Arkansas Freedom Fund for Veterans, America's Car Mart, Inc., American Fidelity General Agency, Inc., Carelink, the Central Arkansas Area Agency on Aging, Franklin Electric Co., Inc., Freshbenies, Martin Resource Management Corporation, National Multiple Sclerosis Society, New Benefits, Legacy Capital Group Arkansas, Parkinson's Action Network, Teladoc, TelaMedPlus, and United Spinal Arkansas.

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  
3019

**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 2010

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, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? Regulation 38, Governing Telemedicine

2. What is the subject of the proposed rule? To establish a requirement for physicians to provide telemedicine services.

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? Telemedicine has been introduced

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.

Place: Offices of the Arkansas State Medical Board, 1401 W. Capitol Ave. Suite 340, 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**

**RECEIVED**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

APR 29 2011

**DEPARTMENT** Arkansas State Medical Board **BUREAU OF**  
**DIVISION** \_\_\_\_\_ **LEGISLATIVE RESEARCH**  
**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** Regulation 38, Governing Telemedicine

- 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**

**Proposed Regulation 38 Governing Telemedicine**

To establish a requirement for physicians to provide telemedicine services.

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