

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

**John Thurston**

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



**For Office**

**Use Only:**

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Department of Health

Department Division of Health Related Boards & Commissions/ Social Work Licensing Board

Contact Ruthie Bain E-mail swlb@arkansas.gov Phone 501-372-5071

Statutory Authority for Promulgating Rules A.C.A. 17-103-203

**Rule Title:** XIV. Telemedicine

**Intended Effective Date**

(Check One)

**Date**

Emergency (ACA 25-15-204) Legal Notice Published .....

10 Days After Filing (ACA 25-15-204) Final Date for Public Comment .....

Other \_\_\_\_\_ Reviewed by Legislative Council ..... 3/19/2020  
(Must be more than 10 days after filing date.)

Adopted by State Agency ..... 9/9/2019

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Ruthie Bain swlb@arkansas.gov 3/20/2020

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

*Ruthie Bain*

Signature

501-372-5071 swlb@arkansas.gov

Phone Number

E-mail Address

Director, Social Work Licensing Board

Title

3/19/2020

Date

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT/AGENCY:** Department of Health  
**DIVISION:** Division of Health Related Boards and Commissions/Social Work Licensing Board  
**PERSON COMPLETING THIS STATEMENT:** Ruthie Bain  
**PHONE NO:** (501) 372-5071 **FAX NO.:** (501) 372-6301 **E-MAIL:** swlb@arkansas.gov

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:** XIV. Telemedicine:

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes \_\_\_\_\_ No   X
  
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   X   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   X   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;
  
  - (b) The reason for adoption of the more costly rule;
  
  - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
  
  - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
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**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total           0          

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total           0

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

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total 0

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total 0

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**

\$ 0

\$ 0

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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**

\$ 0

\$ 0

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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 X

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.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE  
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY: Department of Health  
DIVISION: Division of Health Related Boards and Commissions/ Social Work Licensing Board  
DIVISION DIRECTOR: Matt Gilmore  
CONTACT PERSON: Ruthie Bain  
ADDRESS: 2020 West Third St., Suite 518, Little Rock, AR 72205  
PHONE NO: (501) 372-5071 FAX NO.: (501) 372-6301 E-MAIL: swlb@arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING: Ruthie Bain  
PRESENTER E-MAIL: swlb@arkansas.gov

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:

Jessica C. Sutton  
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? XIV. Telemedicine
- 2. What is the subject of the proposed rule?  
  
XIV. Telemedicine:  
Added section on telemedicine in compliance with Act 203 of 2017. These rules are similar to the Arkansas Medical Board Rules and are no less restrictive than the Medical Board Rules. The rules give guidance to licensed social workers on telehealth services.
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes \_\_\_ No X  
  
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 X  
No \_\_\_  
  
If yes, what is the effective date of the emergency rule? March 19, 2020  
  
When does the emergency rule expire? July 19, 2020

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 rule.

XIV. Telemedicine:

Added section on telemedicine in compliance with Act 203 of 2017; These rules are similar to the Arkansas Medical Board Rules and are no less restrictive than the Medical Board Rules. The rules give guidance to licensed social workers on telehealth services.

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.

Ark. Code Ann. 17-103-203

7. What is the purpose of this proposed rule? Why is it necessary? The rule is necessary to comply with the Arkansas Telemedicine Act in accordance with licensing boards having rules that are no less restrictive than the Arkansas State Medical Board. The **emergency rule** is necessary to assist social workers in Arkansas to provide telehealth services during the public health crisis of COVID-19

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). <http://www.arkansas.gov/swlb/>

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

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

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

\_\_\_\_\_

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

March 19, 2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.
13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).
14. 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.

## XIV. Telemedicine (Ark. Code Ann. §17-103-309)

## A. Definitions:

1. “Distant site” means the location of the healthcare professional delivering services through telemedicine at the time the services are provided. Ark. Code Ann. §17-80-402(1).
2. “Originating site” means a site at which a patient is located at the time healthcare services are provided to him or her by means of telemedicine. Ark. Code Ann. §17-80-402(2).
3. “Remote patient monitoring” means the use of synchronous or asynchronous electronic information and communication technology to collect personal health information and medical data from a patient at an originating site that is transmitted to a healthcare professional at a distant site for use in the treatment and management of medical conditions that require frequent monitoring. Ark. Code Ann. §17-80-402(5).
4. “Store-and-forward technology” means the asynchronous transmission of a patient’s medical information from a healthcare professional at an originating site to a healthcare professional at a distant site. Ark. Code Ann. § 17-80-402(6).
5. “Telemedicine” means the use of electronic information and communication technology to deliver healthcare services, including without limitation the assessment, diagnosis, consultation, treatment, education, care management, and self-management of a patient. Telemedicine includes store-and-forward technology and remote patient monitoring. Ark. Code Ann. § 17-80-402(7).

## B. Establishing a Social Worker/Client Relationship:

A social worker/client relationship must be established in accordance with Ark. Code Ann. §§17-80-402 & 403 and Rule XIV before the delivery of services via telemedicine. A client completing a psychosocial history online and forwarding it to a social worker is not sufficient to establish the relationship, nor does it qualify as store-and-forward technology. A social worker exhibits gross negligence if he



or she provides and/or recommends any form of treatment via telemedicine without first establishing a proper social worker/client relationship.

C. Minimum Requirements for a Social Worker/Client Relationship:

For the purpose of this Rule, a proper social worker/client relationship, at a minimum requires that:

1. The social worker performs an “in person” psychosocial assessment of the client adequate to establish a diagnosis and develop a treatment plan, OR
2. The social worker performs a face to face psychosocial assessment 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 psychosocial assessment, OR
3. The social worker knows the client and the client’s general psychosocial issues through a previously established professional relationship; AND
4. Appropriate follow-up be provided or arranged, when necessary.

D. When a Social Worker/Client Relationship is Deemed to Exist:

For the purpose of this Rule, a proper social worker/client relationship is deemed to exist in the following situations:

1. When treatment is provided in consultation with, or upon referral by, another provider or treatment team who has an ongoing relationship with the client, and who has agreed to supervise the client’s treatment, including follow up care.
2. On-call or cross-coverage situations arranged by the client’s treating provider or treatment team.

E. Exceptions:

Recognizing a social worker’s duty to adhere to the applicable standard of care and to comply with mandatory reporting laws, the following situations are excluded from the requirement of this rule by Ark. Code Ann. §17-80-403(a)(2):

1. Emergency situations where the life or health of the client is in danger or imminent danger.

2. Simply providing information of a generic nature not meant to be specific to an individual client.

F. Professional Relationship Exceptions:

Under Ark. Code Ann. §17-80-403(c), “Professional relationship” does not include a relationship between a social worker and a client established only by the following:

1. An internet questionnaire;
2. An email message;
3. Patient-generated medical history;
4. Audio-only communication, including without limitation interactive audio;
5. Text messaging;
6. A facsimile machine; or
7. Any combination thereof.

G. Requirements for Services Provided Via Telemedicine:

The following requirements apply to all services provided by social workers using telemedicine:

1. The practice of counseling via telemedicine shall be held to the same standards of care as traditional in-person encounters.
2. The social worker must obtain a detailed explanation of the client’s complaint from the client or the client’s treating provider or treatment team.
3. If a decision is made to provide treatment, the social worker must agree to accept responsibility for the care of the client.
4. If follow-up care is indicated, the social worker must agree to provide or arrange for such follow-up care.
5. The social worker must keep a documented treatment record, including, but not limited to psychosocial history.
6. At the client’s request, the social worker must make available to the client an electronic or hardcopy version of the client’s treatment record

documenting the encounter. Additionally, unless the client declines to consent, the social worker must forward a copy of the record of the encounter to the client's regular treating provider or treatment team if that provider or treatment team is not the same social worker delivering the service via telemedicine.

7. Services must be delivered in a transparent manner, including providing access to information identifying the social worker's licensure and other relevant certifications, as well as client financial responsibilities, in advance of the encounter.
8. If the client, at the recommendation of the social worker, needs to be seen in person, the social worker must arrange to see the client in person or direct the client to their regular treating provider or treatment team or other appropriate provider if the client does not have a treating provider or treatment team. Such recommendation shall be documented in the client's treatment record.
9. Social workers who deliver services through telemedicine must establish protocols for referrals for emergency services.

H. Scope of Practice:

Social workers may practice social work via telemedicine within the definitions found in Ark. Code Ann. §17-103-103.

I. Confidentiality:

Social workers who use technology to facilitate supervision, consultation, or other confidential meetings shall use appropriate precautions to protect the confidentiality of those communications. Precautions to protect confidentiality depend on the type of technology being used, and may include using passwords, firewalls, encryption, and antivirus software; using electronic service providers that rely on standards of security for data that are transmitted and stored; and ensuring a private setting when using their electronic devices. See NASW, ASWB, CSWE, & CSWA Standards for Technology in Social Work Practice.