

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



Secretary of State  
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Name of Department \_\_\_\_\_

Agency or Division Name \_\_\_\_\_

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person \_\_\_\_\_

Contact E-mail \_\_\_\_\_

Contact Phone \_\_\_\_\_

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Name of Rule \_\_\_\_\_

Newspaper Name \_\_\_\_\_

Date of Publishing \_\_\_\_\_

Final Date for Public Comment \_\_\_\_\_

Location and Time of Public Meeting \_\_\_\_\_

## Arkansas State Board of Physical Therapy

Pursuant to the Arkansas Telemedicine Act, Ark. Code Ann. §§ 17-80-401 et seq., the following rule applies to the provision of services via telehealth by physical therapists and physical therapy assistants when acting within their respective scopes of practice.

### **I. Requirement for all services provided by physical therapists using telehealth:**

1. A professional relationship shall be established in compliance with this rule to provide physical therapy services through telehealth.
2. Once a professional relationship is established, a licensee may provide healthcare services through telehealth, including interactive audio, if the healthcare services are within the physical therapy scope of practice.
3. The practice of physical therapy via telehealth shall be held to the same standards of care as traditional in-person encounters.
4. All licensees providing care via telemedicine to a patient located within the State of Arkansas shall be licensed to practice physical therapy in the State of Arkansas.
5. Licensees utilizing telehealth must follow applicable state/federal laws regarding informed consent, HIPAA, medical records and confidentiality, and fraud/waste/abuse.
6. If a decision is made to provide physical therapy through telehealth, the physical therapist accepts responsibility and liability for the care of the patient.

### **II. Patient/ Physical Therapist Relationship**

1. For purposes of this regulation, a professional relationship, at a minimum, requires that:
  - A. The licensee performs a history and an “in person” physical examination of the

patient adequate to establish a diagnosis and identify underlying conditions and/or contraindications to the treatment recommended/provided, OR

B. The licensee personally knows the patient and the patient's general health status through an "ongoing" personal or professional relationship; and

C. Appropriate follow-up be provided or arranged, when necessary, at medically necessary intervals.

2. For the purposes of this regulation, a professional relationship is deemed to exist in the following situations:

A. When treatment is provided in consultation with, or upon referral by, another healthcare professional who has an ongoing relationship with the patient, and who has agreed to supervise the patient's treatment, including follow up care and the use of any prescribed medications.

B. On-call or cross-coverage situations arranged by the patient's treating physical therapist.

3. "Professional relationship" does not include a relationship between a licensee and a patient established only by the following:

A. An internet questionnaire;

B. An email message;

C. Patient-generated medical history;

D. Audio-only communication, including without limitation interactive audio;

E. Text messaging;

F. A facsimile machine; or

G. Any combination thereof.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE**  
**ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Arkansas Department of Health  
DIVISION Division of Health and Related Boards and Commissions—State Board of Physical Therapy  
DIVISION DIRECTOR Matt Gilmore  
CONTACT PERSON Nancy Worthen  
ADDRESS 9 Shackelford Plaza, Suite 3, Little Rock, AR 72211  
PHONE NO 501-228-7100 FAX NO. 501-228-0294 E-MAIL arptb@sbcglobal.net  
NAME OF PRESENTER AT COMMITTEE MEETING Nancy Worthen  
PRESENTER arptb@sbcglobal.net

**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? Arkansas State Board of Physical Therapy Telehealth Rule
- 2. What is the subject of the proposed rule? Telehealth
- 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 \_\_\_\_\_ No x  
If yes, what is the effective date of the emergency rule? \_\_\_\_\_  
When does the emergency rule expire? \_\_\_\_\_  
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.

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. 17-93-302. Powers and duties of the board.

(b). In addition to other powers and duties set forth in this chapter, the board shall:

(1) Adopt reasonable rules and require the payment of license fees adequate to carry out the purposes of this chapter;

7. What is the purpose of this proposed rule? Why is it necessary?

Pursuant to the Arkansas Telemedicine Act, Ark. Code Ann. §§ 17-80-401 et seq., the new rule applies to the provision of services via telehealth by physical therapists and physical therapist assistants when acting within their respective scopes of practice.

Ark. Code Ann. §§ 17-80-406 states "State licensing and certification boards for a healthcare professional shall amend their rules where necessary to comply with this subchapter."

It is necessary for the public to have access to a physical therapist and/or physical therapist assistant when they are unable to see the therapist in person.

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.arptb.org>

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.)

September 10, 2020

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

November 1, 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. Comments are not expected.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT Arkansas Department of Health**  
**DIVISION Division of Health and Related Boards and Commissions—State Board of Physical Therapy**

**PERSON COMPLETING THIS STATEMENT Nancy Worthen**  
**TELEPHONE NO. 501-228-7100 FAX NO. 501-228-0294 EMAIL: arptb@sbcglobal.net**

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 Arkansas State Board of Physical Therapy Telehealth Rule**

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? No cost.

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

(b) What is the additional cost of the state rule? No cost.

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_

General Revenue \_\_\_\_\_

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. No cost.

**Current Fiscal Year**

**Next Fiscal Year**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

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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. No cost.

**Current Fiscal Year**

**Next Fiscal Year**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

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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.