

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



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas State Board of Physical Therapy

Department Arkansas Department of Health

Contact Nancy Worthen E-mail arptb@sbcglobal.net Phone 501-228-7100

Statutory Authority for Promulgating Rules Ark. Code Ann § §17-93-101 through 17-93-505.

Rule Title: State Board of Physical Therapy Telehealth Rule

Intended Effective Date
(Check One)

☒ Emergency (ACA 25-15-204)

☐ 10 Days After Filing (ACA 25-15-204)

☐ Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

N/A

N/A

03/25/2020

03/24/2020

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

Nancy Worthen

arptb@sbcglobal.net

03/26/2020

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.)

Nancy Worthen
Signature

501-228-7100

Phone Number

arptb@sbcglobal.net

E-mail Address

Executive Director

Title

3/26/20

Date

ARKANSAS LEGISLATIVE COUNCIL

Officers

Senator Cecile Bledsoe

Senate Chair

Representative Jeff Wardlaw

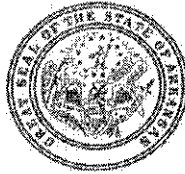
House Chair

Senator Terry Rice

Senate Vice Chair

Representative Jim Dotson

House Vice Chair



**Room 315, State Capitol Building
Little Rock, AR 72201**

Marty Garrity
Executive Secretary

Tel: 501-682-1937

Fax: 501-682-1936

March 25, 2020

Ms. Nancy Worthen, Executive Director
Arkansas State Board of Physical Therapy
9 Shackelford Plaza, Suite 3
Little Rock, AR 72211

Dear Ms. Worthen:

This letter is to notify you that, the Executive Subcommittee exercised the power granted to it under Arkansas Code § 10-3-309(d)(2)(B) and ALC Rule 22(f)(2)(B) to review and approve emergency rules in writing on March 25, 2020. The following emergency rule was reviewed and approved, and the review and approval will be effective at 12:00 noon, Thursday, March 26, 2020:

- ***Arkansas Dept. of Health, Division of Health Related Boards and Commissions/Arkansas State Board of Physical Therapy, emergency rule for Arkansas State Board of Physical Therapy – Telehealth Rule*** – Given the public health crisis posed by COVID-19, this emergency rule adds a section governing telemedicine to the Arkansas State Board of Physical Therapy rules in accordance with the Telemedicine Act, Ark. Code Ann. §§ 17-80-401.

A copy of the emergency rules are attached for your information.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty Garrity".

Marty Garrity
Executive Secretary

MG:sla

cc: Dr. Nathaniel Smith, MD, MPH, Secretary, Arkansas Department of Health (*via electronic mail*)

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, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? State Board of Physical Therapy Telehealth Rule
2. What is the subject of the proposed rule? Emergency rule to permit physical therapy through telehealth due to the COVID-19 pandemic.
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. Telemedicine Act - Ark. Code Ann. §§ 17-80-401 et seq.
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? Immediately on filing
When does the emergency rule expire? 120 days
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes. ☐ No ☐ TBD

Revised June 2019

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

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

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.

ACA 17-80-401, Telemedicine Act

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

To allow physical therapists and physical therapist assistants to work under the Telemedicine Act due to the COVID-19 Pandemic.

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.)

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

Immediately following filing.

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.

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 State Board of Physical Therapy Telehealth Rules

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

\$ _____

\$ _____

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

\$ _____

\$ _____

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 _____

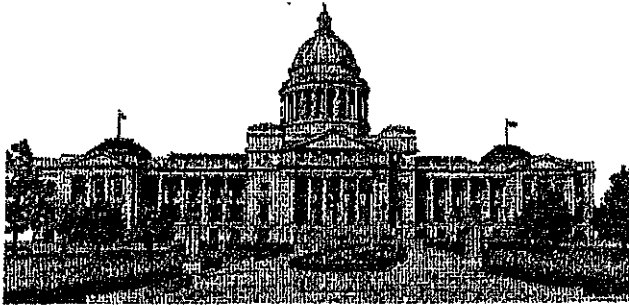
If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

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.

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department Arkansas Department of Health
Agency or Division Name Division of Health and Related Boards and Commissions -State Board of Physical Therapy
Other Subdivision or Department, If Applicable _____
Previous Agency Name, If Applicable Arkansas State Board of Physical Therapy
Contact Person Nancy Worthen
Contact E-mail arptb@sbcglobal.net
Contact Phone 501-228-7100

Name of Rule State Board of Physical Therapy Telehealth Rule
Newspaper Name None - Emergency Rule
Date of Publishing None
Final Date for Public Comment None
Location and Time of Public Meeting None



**STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH**

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Estella Smith, Assistant Director
for Research Services

MEMORANDUM

TO: Members, ALC – Executive Subcommittee

CC: Marty Garrity, Director, Bureau of Legislative Research

FROM: Jessica Sutton, Administrator, Administrative Rules Review Section, Legal Services Division

DATE: March 23, 2020

SUBJECT: Legal Authorization for the Emergency Promulgation of the State Board of Physical Therapy Telehealth Rule

The Arkansas State Board of Physical Therapy is authorized to adopt reasonable rules to carry out the purposes of the Arkansas Physical Therapy Act, Ark. Code Ann. §§ 17-93-101 through 17-93-505. *See* Ark. Code Ann. § 17-93-202(b)(1). Pursuant to Ark. Code Ann. § 17-80-406, state licensing and certification boards for a healthcare professional shall amend their rules where necessary to comply with the Telemedicine Act, Ark. Code Ann. §§ 17-80-401 through 17-80-407.

The Telemedicine Act provides that, once a professional relationship is established, a healthcare professional may provide healthcare services through telemedicine, including interactive audio, if the healthcare services are within the scope of practice for which the healthcare professional is licensed or certified. Ark. Code Ann. § 17-80-404(a)(2). A licensing or certification board shall not permit the use of telemedicine in a manner that is less restrictive than the use of telemedicine authorized by the Arkansas State Medical Board. Ark. Code Ann. § 17-80-404(a)(3).



***Arkansas State Board of
Physical Therapy***

9 Shackelford Plaza, Suite 3
Little Rock, AR 72211
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Fax: 501-228-0294
arptb@sbcglobal.net
www.arptb.org

March 20, 2020

The Honorable Cecile Bledsoe &
The Honorable Jeff Wardlaw
Arkansas State Legislature
1 Capitol Mall, Fifth Floor
Little Rock, AR 72201

Dear Senator Bledsoe and Representative Wardlaw:

On behalf of the State Board of Physical Therapy please find enclosed a request to approve an emergency Rule.

Due to on-going COVID-19 concerns, the Board has approved the attached emergency Rule allowing physical therapists and physical therapist assistants, as they are considered healthcare professionals, to perform telemedicine under the Arkansas Telemedicine Act, Ark. Code Ann. §§ 17-80-401 et seq.

Attached are the Rule Approval Questionnaire, Financial Impact Statement, and a copy of the Rule. If I can be of any assistance to you or your staff as you review our proposed emergency rule please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Nancy Worthen'.

Nancy Worthen
Executive Director

Attachments