

ARKANSAS REGISTER

Transmittal Sheet

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Secretary of State
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For Office
Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas State Medical Board

Department _____

Contact Kevin M. O'Dwyer E-mail kodwyer@htolaw.com Phone 501-372-4144

Statutory Authority for Promulgating Rules _____

Rule Title: Proposed Amendment to Regulation 38 - Telemedicine

Intended Effective Date
(Check One)

Date

Emergency (ACA 25-15-204)

Legal Notice Published

Nov. 6, 13, 20, 2018

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

Final Date for Public Comment

12/6/2018

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

Reviewed by Legislative Council

5/17/2019

Adopted by State Agency

12/6/2018

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

Kevin M. O'Dwyer

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May 30, 2019

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.)

Amy E. Embry
Signature

Amy Embry amy.embry@armedicalboard.org

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501-296-1802

Executive Director

Title

5/30/2019

Date

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WILLIAM H. TRICE III (1946-2014)

May 30, 2019

Mr. John Thurston
Secretary of State
State Capitol – Room 026
Little Rock, AR 72201-1094

**Re: My Client: Arkansas State Medical Board
Proposed Amendment to Regulation 38 – Telemedicine**

To Whom It May Concern:

Enclosed is an Arkansas Register Transmittal Sheet and a copy of the Proposed Amendment to Regulation 38 – Telemedicine.

Please file this accordingly.

Sincerely,

HOPE, TRICE, O'DWYER & WILSON, P.A.



Kevin M. O'Dwyer
Attorney for the Arkansas State Medical Board

KMO:ena
enclosure

cc: Ms. Amy Embry, Executive Director
register@sos.arkansas.gov

AMENDMENT TO REGULATION 38 – TELEMEDICINE

Requirement for all services provided by Providers using telemedicine:

1. A Patient/Provider relationship must be established in accordance with Regulation 2.8 before the delivery of services via telemedicine. Provider is defined as a person licensed by the Arkansas State Medical Board. A patient completing a medical history online and forwarding it to a Provider is not sufficient to establish the relationship, nor does it qualify as store-and-forward technology.
2. The following requirements apply to all services provided by Providers using telemedicine:
 - A. The practice of medicine via telemedicine shall be held to the same standards of care as traditional in-person encounters.
 - B. The Provider must obtain a detailed explanation of the patient's complaint from the patient or the patient's treating Provider.
 - C. If a decision is made to provide treatment, the Provider must agree to accept responsibility for the care of the patient.
 - D. If follow-up care is indicated, the Provider must agree to provide or arrange for such follow-up care.
 - E. A Provider using telemedicine may NOT issue a prescription for any controlled substances defined as any scheduled medication under schedules II through V unless the Provider has seen the patient for an in-person exam or unless a relationship exists through consultation or referral; on-call or cross-coverage situations; or through an ongoing personal or professional relationship.
 - F. The Provider must keep a documented medical record, including medical history.
 - G. At the patient's request, the Provider must make available to the patient an electronic or hardcopy version of the patient's medical record documenting the encounter. Additionally, unless the patient declines to consent, the Provider must forward a copy of the record of the encounter to the patient's regular treating Provider if that Provider is not the same one delivering the service via telemedicine.
 - H. Services must be delivered in a transparent manner, including providing access to information identifying the Provider in advance of the encounter, with licensure and board certifications, as well as patient financial responsibilities.

PROPOSED

- I. If the patient, at the recommendation of the Provider, needs to be seen in person for their current medical issue, the Provider must arrange to see the patient in person or direct the patient to their regular treating Provider or other appropriate provider if the patient does not have a treating Provider. Such recommendation shall be documented in the patient's medical record.
- J. Providers who deliver services through telemedicine must establish protocols for referrals for emergency services.
- K. All Providers providing care via telemedicine to a patient located within the State of Arkansas shall be licensed to practice medicine in the State of Arkansas.
- L. A physician shall not issue a written medical marijuana certification to a patient based on an assessment performed through telemedicine.

HISTORY: Adopted October 6, 2016. Effective December 25, 2016; Amended August 3, 2017, Effective October 4, 2017.