

## PROPOSED REGULATION

### CHAPTER 1 ARTICLE XIV

### TELE OPTOMETRY

#### **Requirement for all services provided by Optometrists using Tele Optometry:**

For purposes of this regulation, a proper Optometrist/patient relationship, at a minimum requires that:

1. For the purposes of this regulation, a proper Optometrist -patient relationship is deemed to exist in the following situations:
  - a. 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. When treatment is provided in consultation with, or upon referral by, another Optometrist 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.
  - c. On-call or cross-coverage situations arranged by the patient’s treating Optometrist
  - d. The Optometrist personally knows the patient and the patient’s general health status through an “ongoing” personal or professional relationship;
2. Appropriate follow-up be provided or arranged, when necessary, at medically necessary intervals.
3. An Optometrist /Patient relationship must be established before the delivery of services via Tele Optometry. A patient completing an Optometric history online and forwarding it to an Optometrist is not sufficient to establish the relationship, nor does it qualify as store-and-forward technology.
4. The following requirements apply to all services provided by Optometrists using Tele Optometry :
  - a. The practice of Optometry via Tele Optometry shall be held to the same standards of care as traditional in-person encounters.
  - b. The Optometrist must obtain a detailed explanation of the patient’s complaint from the patient or the patient’s treating Optometrist.
  - c. If a decision is made to provide treatment, the Optometrist must agree to accept responsibility for the care of the patient.
  - d. If follow-up care is indicated, the Optometrist must agree to provide or arrange for such follow-up care.
  - e. An Optometrist using Tele Optometry may NOT issue a prescription for any controlled substances defined as any scheduled medication under schedules II through V unless the Optometrist 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 Optometrist must keep a documented patient record.
  - g. At the patient’s request, the Optometrist must make available to the patient an electronic or hardcopy version of the patient’s Optometric record documenting the encounter. Additionally, unless the patient declines to consent, the Optometrist must forward a copy of the record of the encounter to the patient’s regular treating Optometrist if that Optometrist is not the same one delivering the service via Tele Optometry.
  - h. Services must be delivered in a transparent manner, including providing access to

information identifying the Optometrist in advance of the encounter, with licensure and board certifications, as well as patient financial responsibilities.

- i. If the patient, at the recommendation of the Optometrist, needs to be seen in person for their current Optometric issue, the Optometrist must arrange to see the patient in person or direct the patient to their regular treating Optometrist or other appropriate provider if the patient does not have a treating Optometrist. Such recommendation shall be documented in the patient's Optometric record.
- j. Optometrist who deliver services through Tele Optometry must establish protocols for referrals for emergency services.
- k. All Optometrists providing care via Tele Optometry to a patient located within the State of Arkansas shall be licensed to practice Optometry in the State of Arkansas.

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

DEPARTMENT/AGENCY Arkansas State Board of Optometry  
DIVISION \_\_\_\_\_  
DIVISION DIRECTOR Howard Flippin, OD, Executive Director  
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 kodwyer@htolaw.com

**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? An Amendment to Article XIV, Governing Tele Optometry
2. What is the subject of the proposed rule? To Establish a proper, face to face, Optometrist/patient relationship.
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 X No ☐

If yes, please provide a brief summary explaining the regulation. To establish a proper, face to face, Optometrist/patient relationship.

Does this repeal an existing rule? Yes ☐ No X

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 X

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 §17-95-303; Act 203 of 2017

7. What is the purpose of this proposed rule? Why is it necessary? Act 203 of the 2017 Arkansas State Legislature requires the Optometry Board to establish a proper, face to face, Optometrist/patient relationship.

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 X No ☐

If yes, please complete the following:

Date: November 30, 2017

Time: 1:30 p.m.

1401 W. Capitol Ave. Suite 340, Little  
Place: Rock AR 72201

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

November 30, 2017

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

January 1, 2017

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. Please see attached. Proof of publication will be provided as soon as it is received.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). Please see attached email.

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. Arkansas Optometric Association

### **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas State Board of Optometry

**DIVISION** \_\_\_\_\_

**PERSON COMPLETING THIS STATEMENT** Kevin M. O'Dwyer, Attorney

**TELEPHONE** 501-372-4144 **FAX** 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 XIV, Governing Tele Optometry

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**

General Revenue	<u>N/A</u>
Federal Funds	<u></u>
Cash Funds	<u></u>
Special Revenue	<u></u>
Other (Identify)	<u></u>

**Next Fiscal Year**

General Revenue	<u>N/A</u>
Federal Funds	<u></u>
Cash Funds	<u></u>
Special Revenue	<u></u>
Other (Identify)	<u></u>

Total \_\_\_\_\_

Total \_\_\_\_\_

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

**Current Fiscal Year**

General Revenue N/A  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_

**Next Fiscal Year**

General Revenue N/A  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
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**

\$ N/A

**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**

\$ N/A

**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.

AMENDMENT TO CHAPTER 1 ARTICLE XIV

SUMMARY

Act 203 of the Arkansas State Legislature requires the Optometry Board to develop Rules to Govern Tele- Optometry and establish a proper Physician/Patient relationship.