

# 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 Arkansas Department of Agriculture

Department Veterinary Medical Examining Board

Contact Wade Hodge E-mail wade.hodge@agriculture.arkansas.gov Phone 501-225-1598

Statutory Authority for Promulgating Rules Ark Code Ann. §17-101-203 (12)

Rule Title: VETERINARY TELEHEALTH AND TELEMEDICINE

Intended Effective Date  
(Check One)

Date

- |  |                                       |                               |
|--|---------------------------------------|-------------------------------|
| <input type="checkbox"/> Emergency (ACA 25-15-204)                                     | Legal Notice Published .....          | <u>February 11 - 13, 2022</u> |
| <input checked="" type="checkbox"/> 10 Days After Filing (ACA 25-15-204)               | Final Date for Public Comment .....   | <u>March 12, 2022</u>         |
| <input type="checkbox"/> Other _____<br>(Must be more than 10 days after filing date.) | Reviewed by Legislative Council ..... | <u>June 17, 2022</u>          |
|  | Adopted by State Agency .....         | <u>March 22, 2022</u>         |

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)  
Linda Luebke linda.luebke@agriculture.arkansas.gov June 20, 2022  
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.)

Wade Hodge  
Signature

501-225-1598 wade.hodge@agriculture.arkansas.gov  
Phone Number E-mail Address

Chief Counsel  
Title

June 20, 2022  
Date



Asa Hutchinson  
Governor

# ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205  
agriculture.arkansas.gov  
(501) 225-1598



Wes Ward  
Secretary of Agriculture

June 20, 2022

Honorable John Thurston  
Secretary of State  
State Capitol Rm. 01  
Little Rock, Arkansas 72201-1094

Enclosed is a Transmittal Sheets for a final rule. The rule as were approved at the Veterinary Medical Examining Board at a meeting held March 22, 2022.

The rule was reviewed and approved by the Administrative Rules Subcommittee of the Arkansas Legislative Council on June 16, 2022, and the Arkansas Legislative Council on June 17, 2022.

- **Veterinary Telehealth and Telemedicine**

If more information is needed, please contact me.

Sincerely,

Wade Hodge  
Chief Counsel

WH:ll

## Arkansas Veterinary Medical Examining Board

### Proposed Rule – Veterinary Telehealth and Telemedicine Public Comment Summary and Response

The public notice for the proposed new rule for Veterinary Telehealth and Telemedicine ran in the *Arkansas Democrat-Gazette* on February 11, 12, and 13, 2022. There was an opportunity for oral comments to be made at a public hearing held on February 25, 2022. No oral comments were received. Written comments for the rule were accepted through the close of business on March 12, 2022. Five (5) written comments were received – one (1) in support of the rule, two (2) opposed to the rule, and two (2) opposed to certain parts of the rule. All are summarized below:

1. Dr. Judith Cychol, DVM – Opposed due to concerns that the veterinarian is not establishing the veterinarian-client-patient relationship (VCPR) through a physical examination prior to providing telemedicine services, as well as allowing the certified veterinary technician to see the patient prior to the VCPR being established and without the veterinarian being on-site at the veterinary facility.
2. Ms. Carol Wrape – Opposed due to concerns that the pet owner cannot clearly explain their pet's health issue to a veterinarian via a telemedicine visit, and that any treatment prescribed should be administered by the veterinarian and not the pet owner. The importance of an in-person examination by the veterinarian was stressed in the comment.
3. Dr. Stephenie Kessler, DVM – Supports telemedicine in a general veterinary practice in which the VCPR has been established but is opposed to telemedicine in an emergency veterinary practice due to concerns that the veterinarian is allowing the certified veterinary technician to see the patient prior to the VCPR being established and without the veterinarian being on-site at the veterinary facility.
4. Dr. Ashley Lackey, DVM – Supports telemedicine if the VCPR has been established through an in-person examination by the veterinarian and if it is being used for things like chronic health issues, but is concerned that is not happening, and that instead, the certified veterinary technician is being used to perform the physical examination to establish the VCPR. Dr. Lackey is also opposed to the use of teletriage.
5. American Veterinary Medical Association – Supportive due to the rule requiring the veterinarian providing telemedicine services to first establish the VCPR through an in-person examination of the animal, or for groups of animals, conduct an in-person premise visit where the animal is kept.

In response to the concern that pet owners cannot communicate their pet's issues to the veterinarian via a telemedicine visit, it is specified in the rule that the veterinarian will have to obtain a detailed explanation from the client of the patient's history and presenting complaint. If the veterinarian cannot obtain sufficient information from the client, they will have to determine whether to continue the telemedicine visit. I was also stated that clients may not be able to follow

the veterinarian's instructions for at-home treatment of the animal. It is important to note that even when an in-person visit takes place at a veterinary clinic, clients may still receive at-home care instructions from their veterinarian for the prescribed treatment.

Teletriage was included in the rule to allow veterinarians the ability to listen to a client's concerns in an emergency and be able to provide general advice or a referral to in-person emergency services. Many times, people will utilize a telemedicine service for advice on whether their situation is an actual emergency that requires the in-person attention of a veterinarian, or if there is something they can do at home until their regular veterinarian is available.

Finally, it was obvious in several of the comments that there are concerns that certified veterinary technicians/technologists (CVT) are being inappropriately utilized by veterinarians to establish the VCPR. In accordance with Ark. Code Ann. § 17-101-102 (11), the VCPR can only be established by the veterinarian. Further, the Board's rule on Veterinary Technology – Levels of Supervision specifies that the veterinarian may delegate job duties to the CVT once the veterinarian has established the VCPR. There were also some concerns that veterinarians are leaving CVT's in charge of the veterinary facility and allowing them to intake patients and begin treatment once the CVT has communicated with the veterinarian, who is not onsite, and prior to the veterinarian physically examining the animal to establish the VCPR. Although these concerns are not related to telemedicine, it should be noted that these practices are not allowed pursuant to the Veterinary Medical Practice Act and Board rules.

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

**DEPARTMENT/AGENCY** Arkansas Department of Agriculture  
**DIVISION** Veterinary Medical Examining Board  
**DIVISION DIRECTOR** Cara Tharp  
**CONTACT PERSON** Cara Tharp  
**ADDRESS** 1 Natural Resources Dr., Little Rock, AR 72205  
**PHONE NO.** 501-224-2836 **FAX NO.** 501-224-1100 **E-MAIL** [cara.tharp@agriculture.arkansas.gov](mailto:cara.tharp@agriculture.arkansas.gov)  
**NAME OF PRESENTER AT COMMITTEE MEETING** Cara Tharp  
**PRESENTER E-MAIL** [cara.tharp@agriculture.arkansas.gov](mailto:cara.tharp@agriculture.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? Telehealth
- 2. What is the subject of the proposed rule? The rule establishes the Board’s requirements for telehealth and telemedicine in the practice of veterinary medicine.
- 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? \_\_\_\_\_  
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. The rule implements the provisions of Act 130 of 2021 which provides for the Board to establish rules outlining the use of telehealth and telemedicine in the practice of veterinary medicine.

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."**

Please see attached summary.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

Ark. Code. Ann. §17-101-203(12)

7. What is the purpose of this proposed rule? Why is it necessary? The rule implements the provisions of Act 130 of 2021 which provides for the Board to establish rules outlining the use of telehealth and telemedicine in the practice of veterinary medicine. It is necessary because as of now, there is no provision for veterinarians to practice telehealth or telemedicine.

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).

<https://arvetboard.statesolutions.us/public/>

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

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

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

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

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

To be determined

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

To be determined

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.

Will be provided at a later date

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

Will be provided at a later date

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.

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### **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Agriculture

**DIVISION** Veterinary Medical Examining Board

**PERSON COMPLETING THIS STATEMENT** Cara Tharp

**TELEPHONE NO.** 501-224-2836 **FAX NO.** 501-224-1100 **EMAIL:** [cara.tharp@agriculture.arkansas.gov](mailto:cara.tharp@agriculture.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** Telehealth

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;
- (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? N/A

**Current Fiscal Year**

**Next Fiscal Year**

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

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

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

**Current Fiscal Year**

**Next Fiscal Year**

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

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

**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.

**Current Fiscal Year**

**Next Fiscal Year**

\$ 0.00 \_\_\_\_\_

\$ 0.00 \_\_\_\_\_

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.



Asa Hutchinson  
Governor

# ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205  
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(501) 225-1598



Wes Ward  
Secretary of Agriculture

**February 7, 2022**

## **Proposed Arkansas Veterinary Medical Examining Board Veterinary Telehealth and Telemedicine Rule**

### **Purpose:**

This memorandum analyzes the Arkansas Veterinary Medical Examining Board's (Board) proposed rule covering veterinary telehealth and telemedicine (proposed rule).

### **Background:**

Act 130 of 2021 authorized the Board to promulgate rules regarding telehealth and telemedicine. Department staff engaged with large and small animal practitioners, local and national veterinary associations, and a representative of multiple national companies to gather input regarding the proposed rule. A stakeholder meeting was held on November 9, 2021, and the Board reviewed the proposed rule on December 9, 2021, and decided that another stakeholder meeting should be held. Accordingly, another stakeholder input meeting was held on January 13, 2022, and the Board approved the proposed rule on February 3, 2022.

### **Key Points:** The proposed rule:

- Requires that veterinarians delivering telemedicine service to a patient located in Arkansas must be licensed in Arkansas.
- Requires that a veterinarian-client-patient relationship (VCPR) be established by an in-person examination.
- Provides for limited exceptions to the requirement of establishing an in-person VCPR for emergencies.
- Provides definitions of key terms such as "telehealth," "telemedicine," and "teletriage".

### **Discussion:**

The stakeholder meetings have been an important part of the process in developing the Proposed Rule. Separate groups reached out to Department staff regarding how the veterinarian-client-patient relationship (VCPR) should be established. National corporations that own veterinary clinics across the country believe that the VCPR may be established virtually, while the veterinary associations believe that it should be established through an in-person examination of the animal. After discussion at the stakeholder meetings, as well as discussion by the Board at its meetings, the current version of the proposed rule requires the VCPR to be established through an in-person examination. Most other states that provide a telemedicine option also require, either by law or by rule, that the VCPR be established in-person.

**FINAL RULE**  
**AGENCY NO. 209.05**

**VETERINARY TELEHEALTH AND TELEMEDICINE**

**33. Definitions:**

A. “Telehealth” means use of technology to deliver health information, education, or care remotely.

B. “Telemedicine” means use of technology to exchange medical information electronically from one site to another to improve a patient’s clinical health status, including evaluating, diagnosing, and treating a patient without the need for an in-person visit. Telemedicine is a subcategory of telehealth.

C. “Triage” means emergency animal care, including animal poison control services, for immediate, potentially life-threatening animal health situations (e.g., poison exposure mitigation, animal CPR instructions, other critical lifesaving treatment or advice).

D. “VCPR” means “veterinarian-client-patient relationship” as defined by Ark. Code Ann. § 17-101-102(11).

**34. Requirements for all services provided by veterinarians using telemedicine:**

A. Any person that delivers telemedicine services to a patient located within the State of Arkansas must be licensed to practice veterinary medicine in the State of Arkansas and have an established VCPR.

B. A VCPR must be established by an in-person examination of the animal, or by medically appropriate and timely visits to the premises where the animal is kept. An established VCPR can extend to other veterinarians licensed by the board who practice in the same physical practice as the attending veterinarian if they have access to, and have reviewed, the patient’s medical records. An in-person examination is not required when providing triage services and the patient is referred to in-person emergency services according to protocols established pursuant to Section 34.E and as generally accepted by the veterinary profession.

C. Telehealth services must be delivered in a transparent manner, including providing access to information identifying the veterinarian in advance of the encounter, with name, contact information, and Arkansas license number, as well as the client’s financial responsibilities.

D. The veterinarian must obtain from the client a detailed explanation of the patient’s pertinent history and presenting complaint to determine if using telemedicine is an appropriate method for delivering medical advice or treatment to the patient.

E. Veterinarians delivering services through telehealth must have an established protocol for making referrals for in-person emergency services.

F. If the decision is made to provide treatment through telemedicine, the veterinarian agrees to accept responsibility for the care of the patient and must obtain consent from the client.

G. If the veterinarian determines that the patient needs to be seen in-person for the presenting complaint, they must arrange to see the patient in person or refer the client to another licensed veterinarian.

H. If treatment was provided through telemedicine and follow-up care is indicated, the veterinarian must agree to provide or arrange for such follow-up care.

I. A veterinarian providing treatment through telemedicine may prescribe a drug to the patient if the veterinarian has an established VCPR and is a prescriber acting within their scope of practice.

J. Telemedicine services must be documented in the patient's medical record and comply with the Record Keeping rule established by the Board.