

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
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(501) 682-5070
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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 _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

MARKUP

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 location 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 established protocols 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.

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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

NAME OF PRESENTER AT COMMITTEE MEETING Cara Tharp

PRESENTER E-MAIL 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:

Rebecca Miller-Rice
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? 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 ☐
If yes, please complete the following:

Date: February 25, 2022

Time: 9:30 a.m.

Place: 1 Natural Resources Drive, Little Rock, AR

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

March 12, 2022

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

June 1, 2022

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.

See attached.

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

See attached.

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.
American Veterinary Medical Association - for
Arkansas Veterinary Association - for
Animal Policy Group - for telehealth but opposed to requirement that the veterinary-client-relationship be established by an in-person examination.
Virtual Veterinary Care Association - for telehealth but opposed to requirement that the veterinary-client-relationship be established by an in-person examination.

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

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

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

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

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

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

\$ 0.00

Next Fiscal Year

\$ 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
agriculture.arkansas.gov
(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.