

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K/A

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
DATE OF REPORT (DATE OF EARLIEST EVENT REPORTED): May 27, 2022**

TherapeuticsMD, Inc.

(Exact Name of Registrant as Specified in its Charter)

Nevada

(State or Other
Jurisdiction of Incorporation)

001-00100

(Commission File Number)

87-0233535

(IRS Employer
Identification No.)

951 Yamato Road, Suite 220

Boca Raton, FL 33431

(Address of Principal Executive Office) (Zip Code)

Registrant's telephone number, including area code: **(561) 961-1900**

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
Common Stock, par value \$0.001 per share	TXMD	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230-405) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

EXPLANATORY NOTE

This Amendment No. 1 on Form 8-K/A is an amendment to the Current Report on Form 8-K of TherapeuticsMD, Inc. (the “Company”), filed on June 3, 2022 (the “Original Form 8-K”). Following the filing of the Original Form 8-K, the Company discovered that the wrong item number was inadvertently tagged in the submission (Item 1.01 rather than Item 5.03). The Company is amending the Original Form 8-K to include the correct item and item tag. No disclosure has changed from the Original Form 8-K.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Effective May 27, 2022, the Board of Directors of TherapeuticsMD, Inc., a Nevada corporation (the “Company”), adopted and approved an amendment to the Bylaws of the Company, as previously amended (the “Bylaw Amendment”), to render the provisions of Nevada’s acquisition of controlling interest statutes (NRS 78.378 through 78.3793, inclusive) not applicable to the Agreement and Plan of Merger, dated as of May 27, 2022 (the “Merger Agreement”), among the Company, Athene Parent, Inc. and Athene Merger Sub, Inc. (“Merger Sub”), the acquisition of any shares of the Company’s capital stock thereunder or the consummation of any transactions contemplated thereby, including, without limitation, the cash tender offer to be commenced by Merger Sub to acquire all of the issued and outstanding shares of the common stock, par value \$0.001 per share, of the Company and the merger of Merger Sub with and into the Company, with the Company as the surviving entity.

The foregoing description of the Bylaw Amendment is only a summary and is qualified in its entirety by reference to the complete text of the Bylaw Amendment, which is filed as Exhibit 3.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) *Exhibits*

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
3.1	Second Amendment to Bylaws of the Company, adopted May 27, 2022.
104	Cover Page Interactive Data File (the cover page tags are embedded within the Inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: June 6, 2022

THERAPEUTICSMD, INC.

/s/ Michael C. Donegan

Michael C. Donegan

Interim Chief Financial Officer, Chief Accounting
Officer and Vice President Finance

SECOND AMENDMENT TO BYLAWS

TherapeuticsMD, Inc., a Nevada corporation (the “Company”), desires to amend its Bylaws.

Article XIII – Inapplicability of NRS 78.378 through 78.3793

Article XIII of the Bylaws shall be added as follows:

ARTICLE XIII – (INAPPLICABILITY OF NRS 78.378 THROUGH 78.3793)

Notwithstanding any other provision of these Bylaws to the contrary, the provisions of NRS 78.378 through 78.3793, inclusive, shall not be applicable to the Agreement and Plan of Merger Agreement, dated as of May 27, 2022 (the “Merger Agreement”), by and among the Corporation, Athene Parent, Inc., a Nevada corporation, and Athene Merger Sub, Inc., a Nevada corporation, to the acquisition of any shares of the Corporation’s capital stock thereunder or the consummation of any transactions contemplated thereby, including, without limitation, the Offer (as defined therein), and the Merger (as defined therein), or by the other documents, instruments and arrangements contemplated by the Merger Agreement.

* * * * *

Except as expressly amended or modified by this Second Amendment to Bylaws, all of the terms and conditions of the Bylaws shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the undersigned officer of the Company hereby certifies that the foregoing Second Amendment to the Bylaws was duly adopted by the board of directors of the Company effective as of the 27th day of May, 2022.

THERAPEUTICSMD, INC.

/s/ Marlan D. Walker

By: Marlan D. Walker

Its: Secretary