

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 9. HEALTH SERVICES

#### CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES

#### PREAMBLE

- 1. Sections Affected**

Article 8	<b><u>Rulemaking Action</u></b>
R9-6-801	New Article
R9-6-802	New Section
R9-6-803	New Section
  
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-136(F)  
Implementing statute: A.R.S. § 13-1210
  
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 5 A.A.R. 4711, December 27, 1999  
Notice of Rulemaking Docket Opening: 7 A.A.R. 1319, March 23, 2001
  
- 4. The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name:	Margaret Moore
Address:	Arizona Department of Health Services Bureau of Epidemiology and Disease Control Services 3815 North Black Canyon Highway Phoenix, AZ 85015
Telephone:	(602) 230-5819
Fax:	(602) 230-5973
E-mail:	mamoore@hs.state.az.us
or	
Name:	Kathleen Phillips Rules Administrator
Address:	Arizona Department of Health Services 1740 West Adams, Room 102 Phoenix, AZ 85007
Telephone:	(602) 542-1264
Fax:	(602) 364-1150

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E-mail: kphilli@hs.state.az.us

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed rulemaking will add a new Article 8, entitled "Assaults on Officers or Firefighters." The new Article 8 will include three new Sections to implement A.R.S. § 13-1210. A.R.S. § 13-1210 provides a procedure whereby a law enforcement officer, correctional service officer, detention officer, private prison security officer, or firefighter or the officer or firefighter's employer can obtain a court-ordered test for the presence of blood-borne disease agents, including the human immunodeficiency virus, in the blood of an individual charged in a criminal complaint for interfering with the official duties of the officer or firefighter by biting, scratching, spitting, or transferring blood or other bodily fluids on or through the skin or membranes of the officer or firefighter. A.R.S. § 13-1210 makes the Department of Health Services responsible for establishing the notification procedure to be used to provide such test results. The Department proposes to create a definitions Section and two additional Sections that describe the notification procedure to be used and identify the parties responsible for providing notice.

**6. A reference to any study that the agency relied on in its evaluation of or justification for the proposed rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting materials:**

Not applicable

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

As used in this economic impact summary, minimal means less than \$1,000, moderate means \$1,000 to \$9,999, and substantial means \$10,000 or greater.

The Department will incur a moderate cost for staff time to write, review, and process the rules through promulgation. The Department anticipates that the rules themselves will result in no additional burden on the Department.

The Office of the Secretary of State and the Governor's Regulatory Review Council will also bear minimal to moderate costs from the rulemaking process.

The occupational health care provider for an officer or firefighter who is the victim of an assault covered by A.R.S. § 13-1210 will incur minimal costs as a result of the notification requirements in the rule. Likewise, the health care provider for a subject who is ordered to provide blood samples for testing under A.R.S. § 13-1210 will incur minimal costs as a result of the notification requirements in the rule. If a subject is detained or incarcerated, the chief medical officer of the facility in which the subject is detained or incarcerated will also incur minimal costs as a result of the notification requirements in the rule. The Department estimates that fewer than 50 subjects are ordered to provide blood specimens under A.R.S. § 13-1210 each year. Thus, the aggregate costs for occupational health care providers, health care providers, and chief medical officers should not be greater than moderate for each group.

A number of entities will benefit from the rules. The Department will receive minimal benefits from no longer receiving inquiries from individuals and agencies confused about the notification process under A.R.S. § 13-1210. Each officer or firefighter who is the victim of an assault covered by A.R.S. § 13-1210 will receive a significant, unquantifiable benefit from the information received in the notification counseling and the ability to take appropriate action to protect the officer's or firefighter's own health and the health of those around the officer or firefighter if the subject tests positive for an infectious agent. A subject will also receive a significant, unquantifiable benefit from the information received in the notification counseling and the ability to receive treatment to combat an infectious agent for which the subject tests positive and to take action to protect the health of those around the subject.

A law enforcement agency or firefighting agency that employs an officer or firefighter who is the victim of an assault covered by A.R.S. § 13-1210 will receive a significant, unquantifiable benefit from the information received in a notification counseling and the ability to institute appropriate control measures to prevent further transmission if an officer or firefighter has been exposed to an infectious subject. A law enforcement agency that is detaining or incarcerating a subject will receive the same benefit from the ability to institute appropriate control measures to prevent transmission by an infectious subject.

The individuals who are required to provide notice under the rules will receive minimal benefits from the clarity of the notification procedure under the rules. Currently, there is much confusion over who is responsible to provide notification to whom and in what manner. The rules clarify the responsible parties, identify to whom each responsible party is to provide notification, and prescribe the manner in which notification is to be completed. The Department solicited input from a number of different law enforcement agencies, firefighting agencies, courts, and health care

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provider organizations throughout the state in drafting the rules and designated the individuals who are required to provide notice after determining the parties who are typically involved in providing this notification in the absence of rules.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Margaret Moore  
Address: Arizona Department of Health Services  
Bureau of Epidemiology and Disease Control Services  
3815 North Black Canyon Highway  
Phoenix, AZ 85015  
Telephone: (602) 230-5819  
Fax: (602) 230-5973  
E-mail: mamooore@hs.state.az.us

or

Name: Kathleen Phillips  
Rules Administrator  
Address: Arizona Department of Health Services  
1740 West Adams, Room 102  
Phoenix, AZ 85007  
Telephone: (602) 542-1264  
Fax: (602) 364-1150  
E-mail: kphilli@hs.state.az.us

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: December 10, 2001  
Time: 9:00 a.m.  
Location: Conference Room A and B  
1740 West Adams, 4th floor  
Phoenix, AZ 85007  
Nature: Oral proceeding

A person may submit written comments on the proposed rules no later than 5:00 p.m., December 10, 2001, to the individuals listed in items #4 and #9.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**12. Incorporations by reference and their location in the rules:**

Not applicable

**13. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 6. COMMUNICABLE DISEASES**

**ARTICLE 8. ~~RENUMBERED~~ ASSAULTS ON OFFICERS OR FIREFIGHTERS**

Sections

R9-6-801. ~~Renumbered~~ Definitions  
R9-6-802. ~~Renumbered~~ Notice of Test Results: Subject Incarcerated or Detained  
R9-6-803. ~~Renumbered~~ Notice of Test Results: Subject Not Incarcerated or Detained

**ARTICLE 8. ~~RENUMBERED~~ ASSAULTS ON OFFICERS OR FIREFIGHTERS**

**R9-6-801. Renumbered Definitions**

In this Article, unless otherwise specified:

1. “Agency” means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
2. “Agent” means a virus or bacterium that causes a disease or syndrome in a human.
3. “Average window period” means the typical time between exposure to an agent and the ability to detect infection with the agent in human blood.
4. “Chief medical officer” means the senior health care provider or that individual’s designee who is also a health care provider.
5. “Employer” means an individual in the senior leadership position with the agency or entity for which the officer or firefighter works or that individual’s designee.
6. “Entity” has the same meaning as “person” in A.R.S. § 1-215.
7. “Facility” means an institution in which a subject is incarcerated or detained.
8. “Firefighter” means an individual who is a member of a state, federal, tribal, city, county, district, or private fire department and who was named as the victim of a subject’s assault in a petition filed under A.R.S. § 13-1210 and granted by a court.
9. “Health care provider” means:
  - a. An individual licensed as a doctor of:
    - i. Allopathic medicine under A.R.S. Title 32, Chapter 13;
    - ii. Naturopathic medicine under A.R.S. Title 32, Chapter 15;
    - iii. Osteopathic medicine under A.R.S. Title 32, Chapter 17; or
    - iv. Homeopathic medicine under A.R.S. Title 32, Chapter 29;
  - b. A physician assistant, as defined in A.R.S. § 32-2501;
  - c. A registered nurse, as defined in A.R.S. § 32-2501; or
  - d. A registered nurse practitioner, as defined in A.R.S. § 32-1601.
10. “Laboratory report” means a document, produced by a laboratory that conducted a test or tests on a subject’s blood, showing the outcome of each test conducted and including personal identifying information about the subject.
11. “Occupational health care provider” means a health care provider who provides medical services for work-related health conditions for an agency or entity for which an officer or firefighter works.
12. “Officer” means a law enforcement officer, correctional service officer, detention officer, or private prison security officer who is not a firefighter and who is named as the victim of a subject’s assault in a petition filed under A.R.S. § 13-1210 and granted by a court.
13. “Officer in charge” means the individual in the senior leadership position or that individual’s designee.
14. “Personal notice” means informing an individual by speaking directly to the individual in person.
15. “Petition” means a formal written application to a court requesting judicial action on a matter.
16. “Subject” means an individual whom a court orders, under A.R.S. § 13-1210, to provide samples of blood for testing.
17. “Telephonic notice” means informing an individual by speaking directly to the individual on the telephone, but does not include a message left on a recording device or with another individual.
18. “Test results” means information about the outcome of a laboratory analysis and does not include personal identifying information about the subject.
19. “Written notice” means a document that:
  - a. Describes each test result;
  - b. Identifies a subject only by court docket number; and
  - c. Is provided to an individual:
    - i. In person,
    - ii. By delivery service,
    - iii. By facsimile transmission,
    - iv. By electronic mail, or
    - v. By mail.
20. “Work” means to labor with or without compensation.

**R9-6-802. Renumbered Notice of Test Results; Subject Incarcerated or Detained**

**A.** Within 14 days of receipt of a laboratory report for blood tests ordered by the health care provider on a subject, the health care provider shall provide:

1. A copy of the laboratory report to the chief medical officer of the facility in person, by delivery service, by facsimile transmission, or by mail; and
2. Written notice to the occupational health care provider.

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- B.** Within 14 days of receipt of a laboratory report under subsection (A), the chief medical officer of the facility shall provide:
1. Personal notice, telephonic notice, or written notice to the subject;
  2. If requested by the subject, a copy of the laboratory report in person, by delivery service, by facsimile transmission, or by mail to the subject; and
  3. Personal notice, telephonic notice, or written notice to the officer in charge of the facility.
- C.** Within 14 days of receipt of a laboratory report, the occupational health care provider shall provide personal notice, telephonic notice, or written notice to the officer or firefighter and the employer.
- D.** An individual who notifies a subject, officer, or firefighter shall describe the test results and provide or arrange for the subject, officer, or firefighter to receive the following information about each agent for which the subject was tested:
1. A description of the disease or syndrome caused by the agent, including its symptoms;
  2. A description of how the agent is transmitted to others;
  3. The average window period for the agent;
  4. An explanation that a negative test result does not rule out infection and that retesting for the agent after the average window period has passed is necessary to rule out infection;
  5. Measures to reduce the likelihood of transmitting the agent to others and that it is necessary to continue the measures until a negative test result is obtained after the average window period has passed or until an infection, if detected, is eliminated;
  6. That it is necessary to notify others that they may be or may have been exposed to the agent by the individual receiving notice;
  7. The availability of assistance from local health agencies or other resources; and
  8. The confidential nature of the subject's test results.
- E.** An individual who notifies the employer or the officer in charge of the facility shall describe the test results and provide or arrange for the employer or the officer in charge of the facility to receive the following information about each agent for which the subject's test results indicate the presence of infection:
1. A description of the disease or syndrome caused by the agent, including its symptoms;
  2. A description of how the agent is transmitted to others;
  3. Measures to reduce the likelihood of transmitting the agent to others;
  4. The availability of assistance from local health agencies or other resources; and
  5. The confidential nature of the subject's test results.
- F.** An individual who provides notice under this Section shall not provide a copy of the laboratory report to anyone other than the chief medical officer of the facility or the subject.
- G.** An individual who provides notice shall comply with the following to ensure that notice is provided only to the individual to be notified and to obtain acknowledgment of receipt of the notice:
1. An individual who provides personal notice shall obtain a signed acknowledgment from the individual notified;
  2. An individual who provides written notice by mail shall send the written notice by certified mail, restricted delivery, return receipt requested;
  3. An individual who provides written notice by facsimile transmission shall mark the written notice confidential and shall request that the individual notified sign and return an acknowledgment by facsimile transmission;
  4. An individual who provides written notice by electronic mail shall mark the written notice confidential and shall request that the individual notified return an acknowledgment by electronic mail;
  5. An individual who provides written notice by delivery service shall request that the individual notified send an acknowledgment by facsimile transmission, electronic mail, or mail;
  6. An individual who provides written notice in person shall obtain a signed acknowledgment from the individual notified; and
  7. An individual who provides telephonic notice shall:
    - a. Verify the identity of the individual to be notified by receiving confirmation of any two of the following items regarding the individual to be notified:
      - i. Full name,
      - ii. Date of birth,
      - iii. Home address,
      - iv. Social security number, or
      - v. Badge number; and
    - b. Document the verbal acknowledgment of the individual notified.
- H.** If an individual who has a duty to provide notice to the subject, officer, or firefighter desires to provide telephonic notice and determines that the subject, officer, or firefighter does not have a telephone, the individual may send the subject, officer, or firefighter a letter explaining that the test results under A.R.S. § 13-1210 are available and requesting that the subject, officer, or firefighter telephone the individual to receive them.

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- I. If an individual who has a duty to provide notice under this Section fails to provide notice after at least three attempts on three different dates, the individual shall send to the court that issued the order under A.R.S. § 13-1210 a letter explaining the individual's attempts and failure to provide notice.
- J. The health care provider who ordered the tests shall comply with all applicable reporting requirements contained in this Chapter.

**R9-6-803. Renumbered Notice of Test Results; Subject Not Incarcerated or Detained**

- A. Within 14 days of receipt of a laboratory report for blood tests ordered by the health care provider on a subject, the health care provider shall provide:
  - 1. Personal notice, telephonic notice, or written notice to the subject;
  - 2. If requested by the subject, a copy of the laboratory report in person, by delivery service, by facsimile transmission, or by mail to the subject; and
  - 3. Written notice to the occupational health care provider.
- B. Within 14 days of receipt of a laboratory report, the occupational health care provider shall provide personal notice, telephonic notice, or written notice to the officer or firefighter and the employer.
- C. An individual who notifies a subject, officer, or firefighter shall describe the test results and provide or arrange for the subject, officer, or firefighter to receive the following information about each agent for which the subject was tested:
  - 1. A description of the disease or syndrome caused by the agent, including its symptoms;
  - 2. A description of how the agent is transmitted to others;
  - 3. The average window period for the agent;
  - 4. An explanation that a negative test result does not rule out infection and that retesting for the agent after the average window period has passed is necessary to rule out infection;
  - 5. Measures to reduce the likelihood of transmitting the agent to others and that it is necessary to continue the measures until a negative test result is obtained after the average window period has passed or until an infection, if detected, is eliminated;
  - 6. That it is necessary to notify others of the possibility of exposure to the agent by the individual receiving notice;
  - 7. The availability of assistance from local health agencies or other resources; and
  - 8. The confidential nature of the subject's test results.
- D. An individual who notifies the employer shall describe the test results and provide or arrange for the employer to receive the following information about each agent for which the subject's test results indicate the presence of infection:
  - 1. A description of the disease or syndrome caused by the agent, including its symptoms;
  - 2. A description of how the agent is transmitted to others;
  - 3. Measures to reduce the likelihood of transmitting the agent to others;
  - 4. The availability of assistance from local health agencies or other resources; and
  - 5. The confidential nature of the subject's test results.
- E. An individual who provides notice under this Section shall not provide a copy of the laboratory report to anyone other than the subject.
- F. An individual who provides notice shall comply with the following to ensure that notice is provided only to the individual to be notified and to obtain acknowledgment of receipt of the notice:
  - 1. An individual who provides personal notice shall obtain a signed acknowledgment from the individual notified;
  - 2. An individual who provides written notice by mail shall send the written notice by certified mail, restricted delivery, return receipt requested;
  - 3. An individual who provides written notice by facsimile transmission shall mark the written notice confidential and shall request that the individual notified sign and return an acknowledgment by facsimile transmission;
  - 4. An individual who provides written notice by electronic mail shall mark the written notice confidential and shall request that the individual notified return an acknowledgment by electronic mail;
  - 5. An individual who provides written notice by delivery service shall request that the individual notified send an acknowledgment by facsimile transmission, electronic mail, or mail;
  - 6. An individual who provides written notice in person shall obtain a signed acknowledgment from the individual notified; and
  - 7. An individual who provides telephonic notice shall:
    - a. Verify the identity of the individual to be notified by receiving confirmation of any two of the following items regarding the individual to be notified:
      - i. Full name,
      - ii. Date of birth,
      - iii. Home address,
      - iv. Social security number, or
      - v. Badge number; and
    - b. Document the verbal acknowledgment of the individual notified.

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- G.** If an individual who has a duty to provide notice to the subject, officer, or firefighter desires to provide telephonic notice and determines that the subject, officer, or firefighter does not have a telephone, the individual may send the subject, officer, or firefighter a letter explaining that the test results under A.R.S. § 13-1210 are available and requesting that the subject, officer, or firefighter telephone the individual to receive them.
- H.** If an individual who has a duty to provide notice under this Section fails to provide notice after at least three attempts on three different dates, the individual shall send to the court that issued the order under A.R.S. § 13-1210 a letter explaining the individual's attempts and failure to provide notice.
- I.** The health care provider who ordered the tests shall comply with all applicable reporting requirements contained in this Chapter.