

NOTICE OF PROPOSED EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS
ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION

PREAMBLE

- 1. Article, Part, of Section Affected (as applicable) Rulemaking Action**

R9-6-1001	Amend
R9-6-1002	Amend
R9-6-1004	Amend
R9-6-1005	Amend
R9-6-1006	Amend
- 2. Citations to the agency’s statutory authority for the rulemaking to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing Statutes: A.R.S. §§ 36-136(A)(7) and 36-136(G)
Implementing Statutes: A.R.S. §§ 8-341, 13-1210, 13-1415, 32-3207, 36-136(I)(1), 36-663, and 36-664
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed expedited rulemaking:**

Notice of Docket Opening: 24 A.A.R. 1681, June 15, 2018
- 4. The agency’s contact person who can answer questions about the rulemaking:**

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5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to make rules defining and prescribing “reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases.” A.R.S. § 36-663 specifies requirements, restrictions, and exceptions for HIV- related testing. A.R.S. § 36-664 specifies requirements related to the confidentiality of communicable disease information and circumstances when communicable disease information may be disclosed. A.R.S. §§ 8-341, 13-1210, 13-1415, and 32-3207 specify requirements for court-ordered HIV-related testing. The Department has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 10. As part of the five-year-review report for 9 A.A.C. 6, Article 10, the Department identified changes that should be made to remove definitions that are no longer used, make the rules reflect current practice, improve clarity about the expectation that a local health agency assist a subject with a positive screening test to connect with medical care and more definitive testing, and correct a statutory cross-reference and grammatical errors. The Department believes the rulemaking meets the criteria for expedited rulemaking since the changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but implement a course of action proposed in a five-year-review report approved by the Governor’s Regulatory Review Council on March 6, 2018.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study for this rulemaking.

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

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Not applicable

10. Where, when, and how persons may provide written comment to the agency on the proposed expedited rule under A.R.S. § 41-1027(C):

Close of record: Monday, July 23, 2018, 4:00 p.m.

A person may submit written comments on the proposed expedited rules no later than the close of record to either of the individuals listed in item 4.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require the issuance of a regulatory permit. Therefore, a general permit is not applicable.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal laws do not apply to the rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No such analysis was submitted.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
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Section

R9-6-1001. Definitions

R9-6-1002. Local Health Agency Requirements

R9-6-1004. Court-ordered HIV-related Testing

R9-6-1005. Anonymous HIV Testing

R9-6-1006. Notification

ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION

R9-6-1001. Definitions

In this Article, unless otherwise specified:

1. “Governing board” means a group of individuals, elected as specified in A.R.S. Title 15, Chapter 4, Article 2, to carry out the duties and functions specified in A.R.S. Title 15, Chapter 3, Article 3.
- ~~2.~~ ~~“Informed consent” means permission to conduct an HIV-related test obtained from a subject who has capacity to consent or an individual authorized by law to consent for a subject without capacity to consent after an explanation that complies with A.R.S. § 36-663(B).~~
- ~~3.~~ ~~“Physician” means an individual licensed as a doctor of:~~
 - ~~a.~~ ~~Allopathic medicine under A.R.S. Title 32, Chapter 13;~~
 - ~~b.~~ ~~Osteopathic medicine under A.R.S. Title 32, Chapter 17; or~~
 - ~~c.~~ ~~Homeopathic medicine under A.R.S. Title 32, Chapter 29.~~
- ~~4.2.~~ “School district” means the same as in A.R.S. § 15-101.
- ~~5.3.~~ “Superintendent of a school district” means an individual appointed by the governing board of a school district to oversee the operation of schools within the school district.
- ~~6.~~ ~~“Works” means materials, such as cotton balls or a spoon, required when preparing or using a drug that requires injection.~~

R9-6-1004. Court-ordered HIV-related Testing

- A. A health care provider who receives the results of a test, ordered by the health care provider to detect HIV infection and performed as a result of a court order issued under A.R.S. § 13-1210, shall comply with the requirements in 9 A.A.C. 6, Article 8.
- B. A health care provider who receives the results of a test, ordered by the health care provider to detect HIV infection and performed as a result of a court order issued under A.R.S. § 32-3207, shall comply with the requirements in 9 A.A.C. 6, Article 9.
- C. When a court orders a test under ~~A.R.S. §§ 8-341~~ A.R.S. § 8-341 or 13-1415 to detect HIV infection, the prosecuting attorney who petitioned the court for the order shall provide to the Department:

1. A copy of the court order, including an identifying number associated with the court order;
 2. The name and address of the victim; and
 3. The name and telephone number of the prosecuting attorney or the prosecuting attorney's designee.
- D.** A person who tests a specimen of blood or another body fluid from a subject to detect HIV infection as authorized by a court order issued under ~~A.R.S. §§ 8-341~~ A.R.S. § 8-341 or 13-1415 shall:
1. Use a screening test; and
 2. If the test results from a screening test on the specimen indicate a positive result, retest the specimen using a confirmatory test.
- E.** A person who performs a test described in subsection (D) shall report the test results for each subject to the submitting entity within five working days after obtaining the test results.
- F.** A submitting entity that receives the results of a test to detect HIV infection that was performed for a subject as a result of a court order issued under ~~A.R.S. §§ 8-341~~ A.R.S. § 8-341 or 13-1415 shall:
1. Notify the Department within five working days after receiving the results of the test to detect HIV infection;
 2. Provide to the Department:
 - a. A written copy of the court order,
 - b. A written copy of the results of the test to detect HIV infection, and
 - c. The name and telephone number of the submitting entity or submitting entity's designee; and
 3. Either:
 - a. Comply with the requirements in:
 - i. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
 - ii. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained; or
 - b. Provide to the Department or the local health agency in whose designated service area the subject is living:
 - i. The name and address of the subject;

- ii. A written copy of the results of the test to detect HIV infection, if not provided as specified in subsection (F)(2)(b); and
 - iii. Notice that the submitting entity did not provide notification as specified in subsection (F)(3)(a).
- G.** If the Department or a local health agency is notified by a submitting entity as specified in subsection (F)(3)(b), the Department or local health agency shall comply with the requirements in:
 - 1. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
 - 2. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained.
- H.** When the Department receives a written copy of the results of a test to detect HIV infection that was performed for a subject as a result of a court order issued under ~~A.R.S. §§ 8-341~~ A.R.S. § 8-341 or 13-1415, the Department shall either:
 - 1. Provide to the victim:
 - a. A description of the results of the test to detect HIV-infection;
 - b. The information specified in R9-6-802(D); and
 - c. A written copy of the test results; or
 - 2. Provide to the local health agency in whose designated service area the victim is living:
 - a. The name and address of the victim,
 - b. A written copy of the results of the test to detect HIV infection, and
 - c. Notice that the Department did not provide notification as specified in subsection (H)(1).
- I.** If a local health agency is notified by the Department as specified in subsection (H)(2), the local health agency shall:
 - 1. Provide to the victim:
 - a. A description of the results of the test to detect HIV infection;
 - b. The information specified in R9-6-802(D); and
 - c. A written copy of the test results; or
 - 2. If the local health agency is unable to locate the victim, notify the Department that the local health agency did not inform the victim of the results of the test to detect HIV infection.

R9-6-1005. Anonymous HIV Testing

- A. A local health agency and the Department shall offer anonymous HIV testing to individuals.
- B. If an individual requests anonymous HIV testing, the Department or a local health agency shall:
1. Provide to the individual requesting anonymous HIV testing:
 - a. ~~health~~ Health education about HIV,
 - b. ~~the~~ The meaning of HIV test results, and
 - c. ~~the~~ The risk factors for becoming infected with HIV or transmitting HIV to other individuals;
 - ~~2.~~ Record in a format specified by the Department information about the individual's risk factors for becoming infected with or transmitting HIV and submit the information to the Department;
 - ~~3.2.~~ Collect a specimen of blood from the individual;
 - ~~4.3.~~ Record the following information on a form provided by the Department in a Department-provided format:
 - a. The individual's date of birth_;
 - b. The individual's race and ethnicity_;
 - c. The individual's gender_;
 - d. The date and time the blood specimen was collected_; ~~and~~
 - e. The type of screening test;
 - f. Information about the individual's risk factors for becoming infected with or transmitting HIV; and
 - ~~e.g.~~ The name, address, and telephone number of the person collecting the blood specimen; ~~and~~
 - ~~5.4.~~ Before the individual leaves the building occupied by the Department or local health agency:
 - a. Test the individual's specimen of blood using a the screening test for HIV specified in subsection (B)(3);
 - b. Provide the results of the screening test to the individual;
 - c. ~~Record~~ Enter the test results ~~on the form specified in the record established according to subsection (B)(4) (B)(3)~~; and

- d. If the test results from the screening test on the specimen of blood indicate that the individual may be HIV-infected;
 - i. Assist the individual to connect with persons that may have additional resources available for the individual; and
 - ii. Provide confirmatory testing or submit the specimen of blood to the Arizona State Laboratory for confirmatory testing by:
 - i.(1) Assigning to the blood specimen an identification number corresponding to the ~~pre-printed number on the form specified in~~ record established according to subsection ~~(B)(4)~~ (B)(3);
 - ii.(2) Giving the individual requesting anonymous HIV testing the identification number assigned to the blood specimen and information about how to obtain the results of the confirmatory test; and
 - iii.(3) Sending the blood specimen and the ~~form~~ record specified in subsection ~~(B)(4)~~ (B)(3) to the Arizona State Laboratory for confirmatory testing; and
5. If anonymous HIV testing is provided by a local health agency, submit the record specified in subsection (B)(3) to the Department.

R9-6-1006. Notification

- A. The Department or the Department's designee shall confidentially notify an individual reported to be at risk for HIV infection, as required under A.R.S. § ~~36-664(J)~~ 36-664(I), if all of the following conditions are met:
 - 1. The Department receives the report of risk for HIV infection in a document that includes the following:
 - a. The name and address of the individual reported to be at risk for HIV infection or enough other identifying information about the individual to enable the individual to be recognized and located,
 - b. The name and address of the HIV-infected individual placing the individual named under subsection (A)(1)(a) at risk for HIV infection,
 - c. The name and address of the individual making the report, and
 - d. The type of exposure placing the individual named under subsection (A)

- (1)(a) at risk for HIV infection;
 - 2. The individual making the report is in possession of confidential HIV-related information; and
 - 3. The Department determines that the information provided in the report is accurate and contains sufficient detail to:
 - a. Indicate that the exposure described as required in subsection (A)(1)(d) constitutes a significant exposure for the individual reported to be at risk for HIV infection, and
 - b. Enable the individual reported to be at risk for HIV infection to be recognized
- B.** As authorized under A.R.S. § ~~36-136(L)~~ 36-136(M), the Department shall notify the superintendent of a school district in a confidential document that a pupil of the school district tested positive for HIV if the Department determines that:
- 1. The pupil places others in the school setting at risk for HIV infection; and
 - 2. The school district has an HIV policy that includes the following provisions:
 - a. That a school shall not exclude a pupil who tested positive for HIV from attending school or school functions or from participating in school activities solely due to HIV infection;
 - b. That school district personnel who are informed that a pupil tested positive for HIV shall keep the information confidential; and
 - c. That the school district shall provide HIV-education programs to pupils, parents or guardians of pupils, and school district personnel through age-appropriate curricula, workshops, or in-service training sessions.