

# **Arkansas Supreme Court Statement on H1N1 Virus and the Courts**

**September, 2009**

An outbreak of H1N1 virus is causing concern across the country. Last week the Arkansas Department of Health provided a briefing to members of the Arkansas General Assembly indicating that they expected high rates of infection in the state. The World Health Organization has characterized the disease at Phase 6 on the pandemic alert scale (the sixth phase is the highest alert status, indicating widespread human infection in at least two separate regions of the world). Unlike other emergencies where 30 days is the usual time for scaled-back operations, a pandemic may ebb and flow over a period exceeding 180 days. At any one time, one-third of the workforce may be absent due to illness or serving as a care giver for the ill.

With that in mind, this document attempts to provide Arkansas courts with guidance on how to prepare and respond in the event that the disease spreads further. The two main goals of a judicial pandemic planning are:

1. Operating in a way that protects the health and safety of everyone at court facilities; and
2. Keeping the courts open to ensure justice for the people we serve.

## **Prevention**

Obviously, the most important step in responding to any spreading virus is prevention. The Centers for Disease Control (CDC) has issued the following prevention tips. While they sound simplistic, becoming more intentional about taking reasonable steps to avoid infection is an important step in slowing infection rates. You should share this information with your staff and others in contact with the court and consider taking steps, such as the purchase of necessary supplies, to encourage individuals to participate.

- Cover your nose and mouth with a tissue when you cough or sneeze. Throw the tissue in the trash after you use it. If you don't have a tissue, cough or sneeze into the crook of your elbow.
- Wash your hands often with soap and water, especially after you cough or sneeze. Alcohol-based hand cleaners (such as Purell brand liquid hand sanitizer) are also effective.
- Avoid touching your eyes, nose or mouth. Germs spread that way.
- Try to avoid close contact with persons who become infected.

- If you or one of your staff begins to exhibit symptoms, that individual should stay home from work and limit contact with others to keep from infecting them.
- If you do have to come into contact with individuals who are sick with flu-like symptoms (fever, cough, sore throat, body aches, headache, chills, fatigue), consider wearing a respirator or mask. Disposable masks are relatively inexpensive and can generally be purchased at most drug stores.
- Encourage all employees to obtain vaccinations against both seasonal flu and the H1N1 virus. Information about the availability of the vaccines will be released by local health officials in each community.

### **Information About H1N1 Flu**

**How will I know if what I have is H1N1 flu (swine flu) or regular seasonal influenza?** At this time the H1N1 virus appears to cause similar symptoms as regular seasonal influenza and there is no way to know just from a person's signs and symptoms. However, testing is not being done routinely on patients with mild symptoms. Most likely, you will not be tested, because it is now known that H1N1 currently represents >90% of all influenza A positive samples being tested. Regardless, treatment for influenza-like illness is the same.

**What should I do if I have symptoms or think I have been exposed to the H1N1 flu (swine flu) virus?** If you are concerned that you may have been exposed, closely monitor your health for the symptoms of H1N1 influenza. Tamiflu, the antiviral medication, is not recommended for those with mild symptoms or those in close contact with someone with H1N1. It is recommended for those with underlying illness at high risk of developing complications from H1N1.

**I have heard the terms, "incubation period" and "period of communicability" used many times with the novel H1N1 flu outbreak. What is the difference?** The "incubation period" refers to the time between when a person is first exposed to the virus (becomes infected) to when the person begins to show signs and symptoms of illness. For influenza, the estimated incubation period is 1-4 days. The "period of communicability" refers to the time that a person is able to spread illness to others. For influenza, the period of communicability ranges from 1 day before symptoms begin, to approx 7 days after onset of symptoms in most people, but possibly longer in some people. You can be contagious up to 24 hours after symptoms go away. Make sure you do not return to your daily activities until you have been fever free (less than 100.0 F) for 24 hours without using a fever suppressing medication. The CDC recommends this exclusion period regardless of whether or not antiviral medications are used.

**If I am sick, what can I do to prevent from spreading my illness to others?** If you are sick, you may

be ill for a week or longer. If you develop influenza-like symptoms, you should stay home and avoid contact with others as much as possible until 24 hours after your fever subsides. If you need to leave your home to seek medical care, wear a mask if available, cover your coughs and sneezes with the sleeve of your shirt or a tissue, and then dispose of that tissue once it is used.

**Do I need to be seen if I develop symptoms?** If you have mild symptoms you are better off staying in your home rather than sitting in a medical facility waiting to be seen. If you are not feeling well and you need guidance, call your physician's office and they will help you over the phone to decide if you need to be seen.

**When do I seek medical attention?** Seek medical attention if you have difficulty breathing or shortness of breath, pain or pressure in your chest or abdomen, persistent vomiting, sudden dizziness, confusion, fever greater than 3 days, flu-like symptoms that improve but then return with fever and worsening cough after 12-24 hrs, unusual symptoms like stiff neck or rash. Seek medical attention early if you have an underlying illness that makes you at higher risk of developing complications with the flu. As always, for emergencies, call 911.

## **Preparation**

Courts should begin now to prepare for potential infection in their community. There is no need for alarm; however, being prepared will make responding easier should an outbreak in your community occur. Each court community should form a workgroup with judges and staff, and consider these suggestions to prepare:

1. For current information, keep advised of statewide updates.

2. Determine what essential court functions must continue if an outbreak occurs in your jurisdiction. Essential court functions are defined as court hearings that cannot be continued indefinitely. Courts should discuss which essential functions are necessary in the first 30 days, 30-90 days, and 90+ days. Examples of essential court functions are:

- criminal initial appearance (without unnecessary delay, Ark. R. Crim. P. 8.1)
- probable cause hearing (48 hours of arrest without warrant, Ark. R. Crim. P. 4.1)
- speedy trial (will time run during the "outbreak") (Ark. R. Crim. P. 28.1)
- cases that have victims who are under fourteen years of age (Ark. Code Ann. § 16-10-130; Admin. Order No. 5)

- juvenile probable cause hearing (within five business days, Ark. Code Ann. § 9-27-315)
- juvenile detention hearing (72 hours or next business day following Saturday, Sunday or a holiday, Ark. Code Ann. § 9-27-326)
- hearing on writs of habeas corpus (within three days, Ark. Code Ann. § 16-112-102(a)(1))
- hearing on a temporary restraining order or injunction (as expeditiously as possible, Ark. R Civ. P. 65).

However, civil jury trials might not fall into an essential function until well after 90 days. Courts should pay particular attention to whether or not to conduct jury trials, where large numbers of possibly infected people would report, increasing the chances of transmission of the disease.

3. Determine what staff can perform the essential court functions. In the event of a H1N1 virus outbreak in your community, one of the best ways to prevent the spread of the disease will be isolation. However, not all judges and court staff can stay home if court functions are to continue. Ill staff or those caring for the ill will need to stay home. This may result in some staff assuming essential duties of others who are absent from work. Determining in advance who would actually come to work in the event of an outbreak and who can perform the duties of absent staff will be helpful.

4. Consider setting up remote work possibilities. It may be possible for some of the staff to continue working from home. Judges might be able to conduct telephonic hearings or via videoconferencing. Staff might be able to access the court computer network remotely. Any "telecommuting" possibilities should be explored and set up in advance, as should the human resource/timekeeping issues that may be implicated.

5. Prepare for good communication with the local bar, local officials, the public, and the state. If courts should have a need to close or limit services, notice should be given to the public and bar. Using the court's local website to post information may be helpful. Posting a link to the Arkansas Supreme Court Web Site ( [www.courts.state.ar.us](http://www.courts.state.ar.us) ) might be helpful in the event you are unable to update your local website. You should also have a conversation now with local newspaper and radio representatives in the event that they will agree to assist.

6. Obtain contact information for staff and other key stakeholders. A roster of contact information for all judges and court staff should be reviewed for accuracy. Consider obtaining multiple contact numbers and email addresses for all individuals. In addition, court leaders should obtain contact information for key justice stakeholders, including the County Judge, Sheriff, Prosecuting Attorney, Circuit Clerk, County Clerk, County Bar Association, and Public Defender.

7. Have a discussion with the County Judge, Mayor, and/or local emergency management officials to discuss the issue of who will exercise the authority, should it become necessary, to close the court facility. In other states disputes have arisen when the county administrator announced that the building was being closed without consulting court officials.

8. In 2009, the Arkansas Bar Association released a publication entitled, "Arkansas Public Health Law Bench Book," which was written by the Health Law Committee of the Arkansas Bar Association and made possible through the resources of the University of Arkansas at Little Rock School of Law, the University of Arkansas for Medical Sciences College of Public Health, and a grant from the Centers for Disease Control and Prevention in Atlanta. The Bench Book has been distributed to all judges in the state and contains helpful guidance on legal issues that may arise during a pandemic. The bench book also contains sample order forms.

### **Action**

Should an outbreak occur in your jurisdiction, the following information should assist your court.

#### ***Public Health Authority***

Federal public health powers to control communicable disease are vested in the President, Department of Health and Human Services, and the Centers for Disease Control and Prevention. Under Executive Order of the President, the Secretary of DHHS has specific authority to regulate several communicable diseases, including influenza caused by novel or reemergent flu influenza viruses, that are causing or have the potential to cause a pandemic. The Secretary of Health and Human Services is vested with powers to assist states in enforcing their quarantine orders.

The power to quarantine and imposition of isolation are powers of the state. Isolation is the separation, for the period of communicability, of known infected persons in such places and under such conditions to prevent or limit the transmission of the infectious agent. Quarantine is the restriction of activities of healthy persons who have been exposed to a communicable disease, during its period of communicability, to prevent disease transmission. Generally, individuals are ordered to be isolated. Communities may be quarantined. The closure of schools during an outbreak is an example of quarantine.

In Arkansas, the State Board of Health has the authority to direct and control matters related to quarantine. The State Director of Health has the authority to order a person to be examined to determine the presence of a communicable disease and may order that person into isolation.

#### ***Role of the Court during a Public Health Emergency***

The role of the courts is minimal if everyone complies with the orders of the State Board of

Health and/or Department of Health. The courts' main responsibility is to hear cases and issue orders as needed when an individual does not comply with the imposed control measures with a focus on ensuring that the proper balance is struck between the protection of public health and the protection of individual liberty rights.

The following orders may be sought by state or local authorities:

- Order for Involuntary Medical Testing or Examination
- Order for Involuntary Treatment for a Communicable Disease
- Order for Quarantine or Isolation

Other potential court involvement may include issuance of a temporary restraining order or injunction to force closure of a public gathering place should the proprietor refuse to cooperate with the quarantine order.

Information on each of these orders and sample forms is available in the Arkansas Public Health Bench Book.

### ***Implementing Preparedness Plans***

In the event of a pandemic outbreak in your community, the court leadership should consider implementing the pandemic preparedness plans. Consulting other key justice stakeholders should be included in this decision. Should the plan be implemented, use the information gathered from the steps listed above to mitigate the effects on the court system. Specifically, courts should only conduct essential functions listed in the 0-30 day time frame. Staffing should be kept to a minimum to avoid unnecessary transmission of the virus. Any telecommuting, teleconferencing, and videoconferencing steps should be implemented. Courts should also immediately implement a communication strategy with the public and bar as identified above.

For further assistance, please contact the Administrative Office of the Courts at 501-682-9400.

## RESOURCES

**Arkansas Public Health Law Bench Book**, developed by Health Law Committee of the Arkansas Bar Association, University of Arkansas at Little Rock School of Law, and the University of Arkansas for Medical Sciences College of Public Health

**Centers for Disease Control and Prevention, 2009 H1N1 Flu (Swine Flu)**

<http://www.cdc.gov/H1N1FLU/>

**Florida State Courts Strategy for Pandemic Influenza – Keeping the Courts Open in a Pandemic**, Unified Supreme Court/Branch Court Emergency Management Group (2006)

**"Judicial Response to the Swine Flu, Tips for Texas Courts,"** April 29, 2009, Texas Office of Court Administration)

**World Health Organization, Pandemic (H1N1) 2009**

<http://www.who.int/csr/disease/swineflu/en/>