

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #3

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AUG 3 4 09 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Division of Health
AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §26-5A-7(f)

AMENDMENT TO AN EXISTING RULE: YES _____ NO X


IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 76

TITLE OF RULE BEING PROPOSED: Tuberculosis Control

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Joan E. Ohl, Secretary

\$5.40

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 27, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Division of Health

FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources

State Capitol Complex, Building 3, Room 265, Charleston, WV 25305

Telephone: (304) 558-3223

LEGISLATIVE RULE TITLE: Tuberculosis Control, 64 CSR 76.

1. Authorizing statute(s) citation: WV Code Section 26-5a-7(f)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 30, 1998

b. What other notice, including advertising, did you give of the hearing?

Copies of the rule were sent to all local health departments, to the state

facilities that these rules will effect, and to each county courthouse to be

distributed to the circuit judge, prosecuting attorney, and magistrates. Also a

notification was printed in the Division of Surveillance and Disease Control's

publication: West Virginia EPI-LOG, Statewide Disease Facts and Comparisons.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 30, 1998

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

August 3, 1998

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Marsha Dadisman, Acting Director

Regulatory Development/Department of Health and Human Resources

Room 265, Capitol Complex

Charleston, West Virginia 25305

(304) 558-3223 FAX: (304) 558-1130 MDadisman@WVDHHR.ORG

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Loretta Haddy

Director, Division of Surveillance and Disease Control

Department of Health and Human Resources

1422 Washington Street East

Charleston, West Virginia 25301 (304) 558-5358

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing or comment period:

N/A

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

- d. Attach findings and determinations and reasons:

Attached N/A

Brief Summary of the Rule

The rule addresses WV Code, Chapter 26, Article 5-A, dealing with tuberculosis control. The rule covers: reporting of admissions; maintenance of patient records in state institutions; maintenance of registry by division of health; reporting of tuberculosis cases by health care provider; and procedures for involuntary and immediate involuntary commitment of patients to institutions for the care of tuberculosis, with added instructions for those patients who have an addiction to drugs or alcohol.

Statement of Circumstances Which Require the Proposed Rule

The rule applies to any health care provider that diagnoses or provides care for a patient with tuberculosis; any institution to which the patient is admitted or resides; the local health department in the county of the patient's residence; the circuit and magistrate court when commitment is necessary; and the division of health of the department of health and human resources.

The rule was developed as requested in House Bill 2127 passed in 1996, suspending general notice requirements in tuberculosis cases involving immediate involuntary commitments due to the patient having tuberculosis in a communicable stage, being uncooperative or irresponsible with regard to quarantine or safety measures, and presenting a health menace to others. This bill was amended again, April 12, 1997, to enable the commitment of alcoholic and drug users to detoxification centers prior to their commitment to a facility for the treatment of tuberculosis.

TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 76
TUBERCULOSIS CONTROL

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
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TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 76
TUBERCULOSIS CONTROL

TABLE OF CONTENTS

§64-76-1. General.	1
§64-76-2. Application and Enforcement.	1
§64-76-3. Definitions.	1
§64-76-4. Report of admissions, registration by division of health.	3
§64-76-5. Forms for Committing Patients; Other Records.	3
§64-76-6. Report of Tuberculosis Cases.	4
§64-76-7. When Patient Is a Health Menace to Others; Procedures for Involuntary and Immediate Involuntary Commitment.	5
§64-76-8. Procedures for immediate involuntary commitment.	7
§64-76-9. Severability.	7

64 CSR 76

FILED

TITLE 64

Aug 3 4 03 PM '98

WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 76
TUBERCULOSIS CONTROL

§64-76-1. General.

1.1. Scope - This legislative rule establishes specific standards and procedures concerning tuberculosis (TB) control in state institutions including reporting of admissions, forms for committing patients, maintenance of patients; standards concerning registration of cases by the department of health and human resources; procedures when patient is a health menace to others; and procedures for immediate involuntary commitment

1.2. Authority - W.Va. Code § 26-5A-7(f).

1.3. Filing Date -

1.4. Effective Date -

§64-76-2. Application and Enforcement.

2.1. Application - This rule applies to public health officers, health care providers and facilities, mental health officials and facilities, and to magistrate and circuit court officials.

2.2. Enforcement - This rule is enforced by the director of the division of health or his or her lawful designee and the circuit or magistrate court system.

§64-76-3. Definitions.

3.1. Adequate anti-tuberculosis therapy - Multiple anti-tuberculosis drugs given, that are sensitive to the strain of tuberculosis that has been obtained and cultured from the patient.

3.2. Commit or commitment - Official consignment, as to a prison, mental hospital, or institution.

3.3. Confirmed - Specimen from the patient grows *mycobacterium tuberculosis* in culture.

64 CSR 76

- 3.4. Diagnosis of tuberculosis - Determination of tuberculosis based on:
- 3.4.a. Positive culture for *mycobacterium tuberculosis*; or
 - 3.4.b. All of the four following circumstances:
 - 3.4.b.1. Person displays symptoms associated with tuberculosis, e.g. positive tuberculin skin test;
 - 3.4.b.2. Abnormal chest x-ray, worsening or improving after treatment;
 - 3.4.b.3. Treatment with two or more anti-tuberculosis drugs; and
 - 3.4.b.3. Diagnostic procedures have been completed.
- 3.5. Director - The director of the division of health of the department of health and human resources or his or her lawful designee.
- 3.6. Division - The division of health of the state department of health and human resources.
- 3.7. Health facility - A hospital, nursing home, clinic, or other health care institution.
- 3.8. Health care provider - Any physician, dentist, nurse, paramedic, psychologist or other person providing medical, dental, nursing, psychological or other health care services of any kind.
- 3.9. Health menace - When a person is unable or unwilling to conduct himself in such a manner as not to expose others to his disease.
- 3.10. Nonadherent - Persons afflicted with tuberculosis who have demonstrated an inability or an unwillingness to adhere to a prescribed treatment regimen.
- 3.11. Suspect - Person displaying symptoms of tuberculosis, but the disease is not yet confirmed or met the above criteria for a diagnosis of tuberculosis.
- 3.12. Patient - Any individual confirmed or suspected of having tuberculosis.
- 3.13. Person - Any individual, partnership, corporation or other legal entity.

64 CSR 76

3.14. Reporting source - A health care facility or provider which diagnoses or provides treatment for tuberculosis.

§64-76-4. Report of admissions, registration by division of health.

4.1. Any institution admitting a person diagnosed with tuberculosis, shall report that admission within ten days to the division's tuberculosis control program.

4.2. The institution will make available to the division any patient-related records, reports, and other data pertaining to confirmed and suspected tuberculosis patients, required to: confirm diagnosis, monitor treatment, follow up on contacts, provide tuberculosis surveillance in the community, or to initiate actions to protect others in the community from risk of disease.

4.3. The institution will report the death, discharge, and transfer of any patient with tuberculosis to the Division.

4.4. The Division shall maintain a current registry of all verified cases of tuberculosis.

4.5. The Division or its designee may release information for the following purposes:

4.5.a. Identifying a specific patient to the original reporting source and to other health providers in charge of monitoring care.

4.5.b. Identifying a specific patient to the AIDS program to compare registries to assist in case finding, and patient care.

4.5.c. Identifying a specific patient to tuberculosis control programs in other states when a patient has relocated to that state.

§64-76-5. Forms for Committing Patients; Other Records.

5.1. Application forms for the commitment of a person to an institution for the treatment of tuberculosis are available from the Division and the institution. Submit forms to the institution.

5.2. An additional application for involuntary and immediate involuntary commitment of a person to an institution for the treatment of tuberculosis shall be filed in the circuit court, or magistrate court in the circuit judge's absence.

5.3. The institution will keep a case record for each patient. If the patient is transferred out of the institution to a hospital, nursing home or another institution, a copy of the patient's

record shall be forwarded to the institution.

§64-76-6. Report of Tuberculosis Cases.

6.1. It is mandatory for every physician, public health officer and for every chief medical officer having charge of any hospital, clinic or other similar public or private institution in the State, to report by telephone immediately to the local health department the name, age, sex, race, home address and type of disease of any person with a diagnosis of, or who is suspected of having, tuberculosis.

6.2. A written report (Form TB-34) must be submitted to the Division within forty eight (48) hours of diagnosis of tuberculosis, or suspicion of having tuberculosis. This report requests the following information concerning the person so diagnosed or suspected:

- 6.2.a. Name, address, county, whether the person is homeless;
- 6.2.b. Telephone number, sex, date of birth;
- 6.2.c. Race, ethnic origin;
- 6.2.d. Country of origin, month and year arrived;
- 6.2.e. Occupation;
- 6.2.f. Site of disease;
- 6.2.g. Chest X-ray date and results;
- 6.2.h. Specimen source, smear, culture, and drug susceptibility test results;
- 6.2.i. Tuberculin skin test history;
- 6.2.j. HIV status;
- 6.2.k. Whether the person is a resident of a correctional facility;
- 6.2.l. Whether the person is a resident of a Long-term care facility;
- 6.2.m. The person's alcohol or drug use history;
- 6.2.n. The person's initial drug regimen;

64 CSR 76

6.2.o. The signature of the person submitting the report; and

6.2.p. The date the report is submitted.

6.3. Updates of patients progress or lack thereof are to be submitted upon request to the Division, including, but not limited to, the latest bacteriology results of cultures, any development of drug resistance, latest chest x-ray results, clinical symptoms and treatment.

6.4. If the reporting source or other health care provider proceeds with screening of contacts, names and addresses and results of screening tests of the contacts are to be reported to the local health department. Also, names of contacts of cases that did not return for follow up shall be reported to the local health department.

§64-76-7. When Patient Is a Health Menace to Others; Procedures for Involuntary and Immediate Involuntary Commitment.

7.1. Persons should be considered unable or unwilling to adhere to prescribed treatment if they refuse medication, or show other evidence of not taking medications as prescribed (e.g., incorrect pill counts or urine test showing no evidence of drug metabolites) and if they are unable or unwilling to report for clinic exams.

7.2. Any health-care professional who is aware of a nonadherent tuberculosis patient shall contact the county health officer for necessary interventions. The health officer or his designee shall meet with the patient to determine why the patient is nonadherent to therapy.

7.3. Persons with tuberculosis shall be isolated while they are in a communicable stage. Temporarily restricting the patient to his or her primary residence may adequately protect others from exposure. Immunocompromized individuals and children need to be removed from the household, if the patient stays there while infectious.

7.4. Patients unable to adhere to therapy, or isolate themselves from others, may voluntarily admit themselves to an institution for the care of tuberculosis. The admission will be assisted by the local health department.

7.5. Patients shall be considered for commitment to an institution for the care of tuberculosis if they have:

7.5.a. A positive culture for mycobacterium tuberculosis; or

7.5.b. Clinical signs and symptoms of infectious tuberculosis and one or more of the following:

64 CSR 76

7.5.b.1. Previous treatment for tuberculosis but failure to complete therapy for reasons unrelated to access to treatment or medication;

7.5.b.2. Failure to adhere to present prescribed therapy;

7.5.b.3. Risk for infecting others because of inadequate environmental conditions for proper isolation;

7.5.b.4. Laboratory tests or a history of nonadherence to anti-tuberculosis medication indicate possible infection with drug-resistant mycobacterium tuberculosis.

7.6. When the local health officer determines that commitment is necessary to protect the health of the public, the local health officer or designee, through the prosecuting attorney, shall petition the circuit court in the county where the person is a resident for a hearing before the circuit judge, seven (7) days after notifying the patient, to obtain an order to commit the patient to an institution for the care of tuberculosis.

7.7. The patient shall be present at the hearing and shall have the right to present evidence, confront witnesses and evidence against him or her, and examine testimony offered. Tissues or a surgical mask should be worn by the patient to contain possible cough secretions and reduce the risk of transmitting the disease.

7.8. The hearing should be conducted in a well ventilated room.

7.9. If probable cause is found, the patient shall be immediately committed to an institution maintained for the care and treatment of persons afflicted with tuberculosis.

7.10. If the patient being so committed has a history of alcohol or other drug abuse, he shall be committed to an institution for the care of emotional health for assessment and if needed for complete detoxification, prior to commitment to an institution for the care of tuberculosis.

7.11. A patient with confirmed or suspected active tuberculosis should be transported with a surgical mask covering nose and mouth. The windows of the vehicle should be kept open and the heating and air-conditioning system should be set on a nonrecirculating cycle. Because engineering controls cannot be ensured, personnel transporting the patient should wear respiratory protection meeting current United States Centers for Disease Control and Prevention guidelines.

7.12. Every person so committed shall observe all the rules of the institution. Any patient so committed may be placed apart from others and restrained from leaving the institution so long as he or she continues to be afflicted with tuberculosis and remains a health menace.

64 CSR 76

7.13. Nothing in these rules may be construed to prohibit any person committed to any institution from applying to the supreme court of appeals for a review of the evidence on which the commitment was made. Nothing in these rules may be construed or operate to empower or authorize the division for public health, the department of health and human resources or an authorized designee thereof or the chief medical officer of the institution, or their representatives, to restrict in any manner the individual's right to select any method of tuberculosis treatment offered by the institution.

§64-76-8. Procedures for immediate involuntary commitment.

8.1. When a person has been determined to meet the above criteria for commitment to an institution, but also has demonstrated uncooperative and irresponsible behavior with regard to isolation or safety measures and presents a health threat to others, he should be considered for immediate commitment to an institution for the treatment of tuberculosis.

8.2. An application for hearing is to be completed by the director of the division, or his or her designee, and given to the circuit court, or in the judge's absence to the magistrate court in the county in which the person resides. The application shall contain facts which establish reasons for the commitment.

8.3. In the absence of the circuit judge, the magistrate finds that immediate detention is necessary, an order may be given for the patient to be temporarily detained up to twenty-four hours until application can be presented to the circuit court, or if requested by the patient or his or her counsel, up to forty-eight (48) hours.

8.4. The patient should be detained in a room separate from others with separate ventilation. Tissues or a surgical mask may be given to the patient to contain cough secretions to reduce transmission. Tissues or mask should be worn at all times when out of the isolation room. Persons in contact with the patient should wear respiratory protection as stated in subsection 7.11.

8.5. Proceedings should then be instituted for involuntary commitment as explained in section 7.

§64-76-9. Severability.

The provisions of this rule are severable. If any provisions of this rule are held invalid, the remain provisions remain in effect.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Tuberculosis Control

Type of Rule: Legislative Interpretive Procedural

Agency: Bureau for Public Health (For the Division of Health)
Department of Health and Human Resources

Address: Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost				\$0	\$0
Personal Services					
Current Expense					
Repairs & Alterations					
Equipment					
Other					
Revenue				0	0

2. Explanation of above estimates.

There are no costs or revenues associated with this rule.

3. Objectives of this rule:

The rule addresses WV Code, Chapter 26, Article 5-A, which covers reporting of admissions, maintenance of patient records in state institutions, maintenance of registry by division of health, reporting of tuberculosis cases by health care provider, and procedures for involuntary and immediate involuntary commitment of patients to institutions for the care of tuberculosis, with added instructions for those patients who have an addiction to drugs and/or alcohol

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None anticipated.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.


None anticipated.

C. Economic Impact on Citizens/Public at Large.

None anticipated.

Date: 6/30/98

Signature of Agency Head or Authorized Representative



Joan E. Ohl, Secretary
Department of Health and Human Resources