

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

Form #4

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May 20 8 36 AM '98

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Health, Dept 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

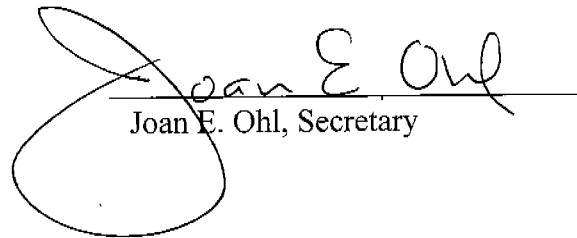
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 76

TITLE OF RULE BEING PROPOSED: Tuberculosis Control

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Joan E. Ohl, Secretary

\$4.00

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

**SERIES 76
TUBERCULOSIS CONTROL**

**MODIFIED PROPOSED RULE
AFTER REVIEW BY THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

SERIES 76
TUBERCULOSIS CONTROL

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TITLE 64

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

OFFICE OF HEALTH, 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 a patient is a health menace to others; and procedures for immediate involuntary commitment. This rule should be read in conjunction with W. Va. Code §26-5A-1 et seq. (Tuberculosis Control).

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

3.2. Confirmed (when used in relation to the diagnosis of tuberculosis) - A specimen from the patient grows *mycobacterium tuberculosis* in a culture.

3.3. Diagnosis of tuberculosis - A determination of tuberculosis based on:

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3.3.a. Positive culture for *Mycobacterium tuberculosis*; or

3.3.b. All of the four following circumstances:

3.3.b.1. The person displays symptoms associated with tuberculosis, e.g., a positive tuberculin skin test;

3.3.b.2. The person has an abnormal chest x-ray, worsening or improving after treatment;

3.3.b.3. The person is prescribed treatment with two or more anti-tuberculosis drugs; and

3.3.b.4. The person's diagnostic procedures have been completed.

3.4. Director - The director of the division of health of the department of health and human resources or his or her lawful designee.

3.5. Division - The division of health of the state department of health and human resources.

3.6. 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.

3.7. Health menace - A patient who has tuberculosis in an infectious state, is at risk of becoming infectious, or is at risk for drug-resistant tuberculosis as determined by his or her physician, and is unable or unwilling to conduct himself or herself in such a manner as not to expose others to his or her disease.

3.8. Institution - A hospital, nursing home, clinic, or correctional facility responsible for the care of a patient with tuberculosis.

3.9. Non-adherent - A patient afflicted with tuberculosis who has demonstrated an inability or an unwillingness to adhere to a prescribed treatment regimen, such as the patient is not taking medications as prescribed or is not keeping medical appointments.

3.10. Patient - Any individual confirmed or suspected of having tuberculosis.

3.11. Person - Any individual, partnership, corporation or other legal entity.

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3.12. Reporting source - An institution 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 patient diagnosed with tuberculosis, shall report that admission within ten days to the division's tuberculosis control program.

4.2. The institution shall make available to the division any patient-related records, reports, and other data pertaining to confirmed and suspected tuberculosis patients, required to: confirm the 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 shall 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 tuberculosis related information regarding a patient for the following purposes:

4.5.a. To allow for diagnosis, treatment and monitoring care by the original reporting source and other health providers in charge of the patient's care or in charge of the patient's contact's care.

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

4.5.c. To allow for diagnosis, treatment and monitoring care by tuberculosis control programs in other states for the patient who has relocated to another state and for the patient's contacts who live in another state who are under a health provider's care.

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

5.1. Application forms for the voluntary admission of a patient to an institution for the treatment of tuberculosis are available from the Division and the institution. The patient's attending physician or the local health officer shall submit to the institution the forms and any medical reports, such as X-ray and sputum reports.

5.2. For involuntary and immediate involuntary commitment of a patient to an institution

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for the treatment of tuberculosis, a completed form is signed by the commissioner of the bureau of public health, or by the local health officer as the commissioner's designee, or by another designee of the commissioner, and submitted to the prosecuting attorney for petition to the circuit court, or magistrate court in the circuit judge's absence.

5.3. The institution shall keep a case record for each patient. If the patient is transferred, the institution shall forward a copy of the patient's record to the institution to which the patient is being transferred. If the patient is discharged, the institution shall forward a copy of the patient's record to the local health department.

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

6.1. 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, shall immediately telephone the local health department and report 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. The health care provider reporting under subsection 6.1 of this section shall also submit a written report (Form TB-34) to the Division within forty-eight (48) hours of a diagnosis of tuberculosis or upon suspicion that a person has tuberculosis. This report shall contain the following information concerning the patient diagnosed with tuberculosis or suspected of having tuberculosis:

- 6.2.a. The patient's name, address and county and whether the patient is homeless;
- 6.2.b. The patient's telephone number, sex and date of birth;
- 6.2.c. The patient's race and ethnic origin;
- 6.2.d. The patient's country of origin and the month and year the patient arrived in the United States;
- 6.2.e. The patient's occupation;
- 6.2.f. Site of the disease;
- 6.2.g. The patient's chest X-ray date and its results;
- 6.2.h. A specimen's source, smear, culture and drug susceptibility test results;

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- 6.2.i. The patient's tuberculin skin test history;
- 6.2.j. The patient's HIV status;
- 6.2.k. Whether the patient is a resident of a correctional facility;
- 6.2.l. Whether the patient is a resident of a long-term care facility;
- 6.2.m. The patient's alcohol or drug use history;
- 6.2.n. The patient's initial drug regimen;
- 6.2.o. The signature of the person submitting the report; and
- 6.2.p. The date the report is submitted.

6.3. The health care provider shall submit to the Division updates of patients' progress or lack of progress, including, but not limited to, the latest bacteriology results of cultures, any development of drug resistance, the most recent chest x-ray results, clinical symptoms and treatment.

6.4. The health care provider shall report any screening of contacts, with the names and addresses and results of the screening tests of the contacts, to the local health department. Also, the health care provider shall report to the local health department the names of contacts of cases that did not return for follow up.

§64-76-7. Procedure When Patient Is a Health Menace to Others.

7.1. A health care provider shall consider a patient non-adherent if the patient is unable or unwilling to report for medical examinations or is unable or unwilling to adhere to prescribed treatment, such as refusing to take medications or showing other evidence of not taking medications as prescribed; e.g., incorrect pill counts or a urine test showing no evidence of drug metabolites.

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

7.3. Patients with tuberculosis shall be isolated while they are in a communicable stage. The patient shall be restricted to his or her isolation room or primary residence until he or she is

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no longer infectious. The health care provider shall advise immunocompromised individuals and guardians of children of the need for them to be removed from the house hold, 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 local health department shall assist with the admission.

7.5. Patients who have a positive culture for mycobacterium tuberculosis or clinical signs and symptoms of infectious tuberculosis shall be considered a health menace and considered for commitment to an institution for the care of tuberculosis if one or more of the following conditions exist:

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

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

7.5.c. Risk for infecting others because of inadequate environmental conditions for proper isolation; or

7.5.d. 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 his or her designee, through the prosecuting attorney, shall petition the circuit court in the county where the patient is a resident for a hearing before the circuit judge to obtain an order to commit the patient to an institution for the care of tuberculosis. The local health officer or his or her designee shall personally service notice upon the patient seven days prior to the date of the scheduled hearing.

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 patients afflicted with tuberculosis.

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7.10. If the patient being committed has a history of alcohol or other drug abuse, he or she 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 patient committed to an institution shall observe all the rules of the institution. The patient 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.

7.13. Nothing in this rule may be construed to prohibit any patient committed to any institution from applying to the West Virginia Supreme Court of Appeals for a review of the evidence on which the commitment was made. Nothing in this rule 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 patient has been determined by the commissioner of the bureau of public health, or by the local health officer as the commissioner's designee, or by another designee of the commissioner, to meet the criteria set forth in section 7 of this rule 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, the commissioner should consider him or her for immediate commitment to an institution for the treatment of tuberculosis.

8.2. The commissioner of the bureau of public health, or his or her designee, shall complete an application for hearing and deliver it to the prosecuting attorney, of the county in which the patient resides, for petitioning the circuit court, or in the judge's absence, for petitioning the magistrate court. The application shall contain facts which establish reasons for the commitment.

8.3. If in the absence of the circuit judge, the magistrate finds that immediate detention is

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necessary, the magistrate may issue an order for the patient to be temporarily detained in isolation for up to twenty-four hours until an application can be presented to the circuit court, or if requested by the patient or his or her counsel, temporary detention may be extended up to an additional forty-eight (48) hours.

8.4. The patient shall be detained in a room separate from others with separate ventilation, such as a hospital isolation negative air flow room, a jail where no other inmates are housed at the time or a motel room with separate air conditioning to the outside. The patient shall wear a surgical mask or cover his or her mouth with tissues to contain cough secretions to reduce any 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. of this rule.

8.5. Proceedings shall then be instituted for involuntary commitment as provided for in section 7 of this rule.

§64-76-9. Severability.

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



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
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November 12, 1998

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Marsha Dadisman
Health & Human Resources
Capitol Complex
Building 3, Room 265

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Tuberculosis Control, 64CSR76**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency ✓
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____



FILED

Nov 16 12 17 PM '98

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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November 12, 1998

Senator Mike Ross, Co-Chairman
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Debra A. Graham, Counsel

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Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Loretta Haddy
Surveillance & Disease Control
1422 Washington St., East
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Tuberculosis Control, 64CSR76**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
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3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health, Department of Health and Human Resources

Subject: Tuberculosis Control, 64CSR76

PERTINENT DATES

Filed for public comment: June 30, 1998
Public comment period ended: July 30, 1998
Filed following public comment period: August 3, 1998
Filed LRMRC: August 3, 1998
Filed as emergency:

Fiscal Impact: None

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ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 states that the proposed rule applies to public health officers, health care providers and facilities and magistrate and circuit court officials.

Section 3 defines terms.

Section 4 requires any institution admitting a patient diagnosed with tuberculosis to report the admission within 10 days to the Division of Health and to make any records available.

The Division is to maintain a current registry of all verified cases of tuberculosis. This section also specifies the purposes for which information may be released.

Section 5 provides that commitment forms are available from the Division and health facilities.

Section 6 requires every physician, public health officer and every chief medical officer of a health care facility to report tuberculosis cases to their local health department. It sets forth the information which must be contained in the report.

Section 7 relates to tuberculosis patients who are a health menace to others. It provides for the voluntary commitment of a patient to an institution.

Section 8 contains procedures for the immediate voluntary commitment of a patient to an institution.

Section 9 is an unnecessary severability section.

AUTHORITY

Statutory authority: W.Va. Code, §26-5A-7, which provides, in part, as follows:

...(f) The bureau of public health shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions of this article, including, but not limited to, rules relating to the transport and temporary involuntary commitment of patients.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes. However, the proposed rule is somewhat difficult to understand in that there is not enough transition between the proposed rule and the statute.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes, as stated above, there needs to be at least a minimum amount of transition between the statute and the proposed rule. Also terms that are defined are not being used consistently throughout the proposed rule.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.