

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

Form #6

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Division of Health, Department of Health & Human Resources TITLE NUMBER: 64

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

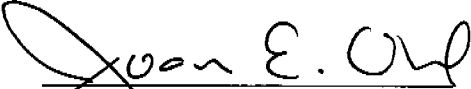
TITLE OF RULE BEING PROPOSED: Tuberculosis Control

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 305

SECTION 64-5-2(l), PASSED ON March 10, 1999

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 1999


Joan E. Ohl, Secretary

\$3.60

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES
RULE PROMULGATION HISTORY ABSTRACT**

Rule Title: 64 Tuberculosis Control

Series Number: 76

Amendment of Existing Rule: **New Rule:**

Responsible Agency: Division of Health

Date Filed for Public Hearing or Comment Period: June 30, 1998

Date of Public Hearing (if any):

Date Public Comment Period Ended: July 30, 1998

**Date Agency-Approved Rule Filed with the
Legislative Rule-Making Review Committee:** August 3, 1998

**Date of Filing of Modified Rule as Approved by
the Legislative Rule-Making Review Committee:** November 20, 1998

Date of Final Filing: April 29, 1999

Effective Date: July 1, 1999

Authorized by: S.B. 305 (With amendments? Yes No)
Passed: March 10, 1999

Dates Emergency Rule in Effect (if any):

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

SERIES 76
TUBERCULOSIS CONTROL

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§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 - April 29, 1999.

1.4. Effective Date - July 1, 1999.

§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:

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.

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 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;

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 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 serve 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.

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 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.

0556

H. B. 2550

1 Bill-Health, Tubercu

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(By Delegates Hunt, Linch, Compton, Faircloth,
Jenkins and Riggs)

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[Introduced February 1, 1999; referred to the
Committee on Health and Human Resources then
the Judiciary.]

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64-76

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10 A BILL to amend and reenact section one, article five,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of health to promulgate a
14 legislative rule relating to tuberculosis control.

15 *Be it enacted by the Legislature of West Virginia:*

16 That section one, article five, chapter sixty-four of
17 the code of West Virginia, one thousand nine hundred
18 thirty-one, as amended, be amended and reenacted, to read
19 as follows:

20 **ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND**
21 **HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

22 **§64-5-1. State board of health; division of health.**

23 (a) The legislative rule filed in the state register

1 on the eighteenth day of November, one thousand nine
2 hundred ninety-six, authorized under the authority of
3 section three, article thirty-two, chapter sixteen of this
4 code, modified by the division of health to meet the
5 objections of the legislative rule-making review committee
6 and refiled in the state register on the sixteenth day of
7 December, one thousand nine hundred ninety-seven, relating
8 to the division of health (asbestos abatement licensing, 64
9 CSR 63), is authorized.

10 (b) The legislative rule filed in the state register
11 on the first day of August, one thousand nine hundred
12 ninety-seven, authorized under the authority of section
13 eight, article thirty-three, chapter sixteen of this code,
14 modified by the division of health to meet the objections
15 of the legislative rule-making review committee and refiled
16 in the state register on the sixteenth day of December, one
17 thousand nine hundred ninety-seven, relating to the
18 division of health (breast and cervical cancer diagnostic
19 and treatment fund, 64 CSR 69), is authorized.

20 (c) The legislative rule filed in the state register
21 on the first day of August, one thousand nine hundred
22 ninety-seven, under the authority of section ten, article
23 five-j, chapter sixteen of this code, modified by the

1 director of the division of health to meet the objections
2 of the legislative rule-making review committee and refiled
3 in the state register on the twenty-third day of January,
4 one thousand nine hundred ninety-eight, relating to the
5 division of health (clinical laboratory technician and
6 technologist licensure and certification, 64 CSR 57), is
7 authorized.

8 (d) The legislative rule filed in the state register
9 on the twenty-second day of December, one thousand nine
10 hundred ninety-seven, authorized under the authority of
11 section two, article thirteen-c, chapter sixteen of this
12 code, relating to the division of health (drinking water
13 treatment revolving fund, 64 CSR 49), is authorized.

14 (e) The legislative rule filed in the state register
15 on the fourth day of June, one thousand nine hundred
16 ninety-seven, authorized under the authority of section
17 seven, article one, chapter sixteen of this code, modified
18 by the division of health to meet the objections of the
19 legislative rule-making review committee and refiled in the
20 state register on the sixteenth day of December, one
21 thousand nine hundred ninety-seven, relating to the
22 division of health (sewage systems, 64 CSR 9), is
23 authorized with the following amendment:

1 On page 7, subsection 5.1. following the sentence
2 which ends "local health department offices." by inserting
3 the following: "Provided, That the director shall issue a
4 permit for the installation of a National Sanitation
5 Foundation Class I home aeration unit to be installed on a
6 single family dwelling unit when no other approved system
7 can be installed."

8 (f) The legislative rule filed in the state register
9 on the third day of August, one thousand nine hundred
10 ninety-eight, authorized under the authority of section
11 seven, article five-a, chapter twenty-six, of this code,
12 modified by the division of health to meet the objections
13 of the legislative rule-making review committee and refiled
14 in the state register on the twentieth day of November, one
15 thousand nine hundred ninety-eight, relating to the
16 division of health (tuberculosis control, 64 CSR 76), is
17 authorized.

18

19 NOTE: The purpose of this bill is to authorize the
20 Division of Health to promulgate a legislative rule
21 relating to Tuberculosis Control.

22

23 Strike-throughs indicate language that would be
24 stricken from the present law, and underscoring indicates
25 new language that would be added.