

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 397

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO PUBLIC HEALTH; PROVIDING FOR COURT-ORDERED  
TREATMENT OR ISOLATION UNTIL COMPLETION OF THERAPY FOR PERSONS  
DEEMED TO POSE A RISK OF TUBERCULOSIS TRANSMISSION TO MEMBERS  
OF THE PUBLIC, RELAPSE OR DEVELOPMENT OF THERAPY-RESISTANCE;  
ENACTING A SECTION OF THE PUBLIC HEALTH ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public Health Act is  
enacted to read:

"NEW MATERIAL PROTOCOL FOR MANAGEMENT OF INFECTIOUS  
FORMS OF TUBERCULOSIS.--

A. When a physician or other person knows that a  
person has an infectious form of tuberculosis, the physician or  
other person shall promptly notify the department.

B. Upon receiving notification that a person has an

1 infectious form of tuberculosis, the department shall prescribe  
2 the person a treatment or isolation plan meeting the  
3 department's therapeutic and public safety specifications for  
4 the infectious form of tuberculosis. The treatment or  
5 isolation plan shall include a notice to the person that  
6 failure to comply with the treatment or isolation plan will  
7 result in immediate initiation of court action to ensure  
8 compliance, as set forth in this section.

9 C. When the department has knowledge that a person  
10 who has an infectious form of tuberculosis has failed to comply  
11 with the department's treatment or isolation plan as described  
12 in Subsection B of this section, the department may petition  
13 the court for an order of protection for the person who has an  
14 infectious form of tuberculosis to comply with whichever of the  
15 following courses of action the department deems appropriate:

- 16 (1) a program of directly observed therapy;
- 17 (2) isolation; or
- 18 (3) directly observed therapy and isolation.

19 D. The petition for an order of protection shall be  
20 made under oath or shall be accompanied by a sworn affidavit  
21 setting out specific facts showing that the person has an  
22 infectious form of tuberculosis.

23 E. The petition for an order of protection shall  
24 state that the person for whom the order is sought:

- 25 (1) has an infectious form of tuberculosis or

1 presents a substantial likelihood of having an infectious form  
2 of tuberculosis based on credible medical evidence;

3 (2) after being advised of the condition and  
4 the risks posed thereby, has failed to comply with the  
5 department's treatment or isolation plan; and

6 (3) poses a substantial likelihood of  
7 transmission of tuberculosis to others because the person is  
8 actively infectious or poses a risk of relapse or development  
9 of a therapy-resistant strain of tuberculosis.

10 F. Upon the filing of a petition for an order of  
11 protection, the court shall:

12 (1) in cases where there is probable cause  
13 established by the petition to give the judge reason to believe  
14 that the person who has been alleged to have an infectious form  
15 of tuberculosis poses a substantial threat to the public health  
16 and safety because the person is actively infectious, or poses  
17 a risk of relapse or development of a therapy-resistant strain  
18 of tuberculosis because of a history of noncompliance,  
19 immediately grant ex parte a temporary order of protection to:

20 (a) administer a program of directly  
21 observed therapy;

22 (b) isolate the person and administer a  
23 program of directly observed therapy; or

24 (c) isolate the person, if the person  
25 refuses a program of directly observed therapy;

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1 (2) cause the temporary order of protection,  
2 notice of hearing and an advisement of the terms of the order  
3 of protection, including the rights of the person alleged to  
4 have an infectious form of tuberculosis to representation and  
5 re-petition for termination of an order of protection, to be  
6 immediately served on the person alleged to have an infectious  
7 form of tuberculosis; and

8 (3) within five days after the granting of the  
9 temporary order of protection, hold an evidentiary hearing to  
10 determine if the court shall continue the order of protection.

11 G. A person held pursuant to a temporary order of  
12 protection as set forth in Subsection F of this section shall  
13 be:

14 (1) entitled to representation by counsel at  
15 the evidentiary hearing and at all hearings thereafter for the  
16 duration of the period of isolation or program of directly  
17 observed therapy; and

18 (2) permitted to communicate on any matter,  
19 including the person's isolation or program of directly  
20 observed therapy, with persons by telephone or other reasonably  
21 available means that do not expose other persons to the risk of  
22 infection, for the duration of the period of isolation or  
23 program of directly observed therapy.

24 H. Counsel may be retained by the person under the  
25 temporary order of protection or shall be appointed by the

1 court if the court determines that the person held cannot  
2 afford legal representation or if the court determines that  
3 appointment of counsel is required in the interest of justice.

4 I. At the evidentiary hearing, the court shall  
5 review the circumstances surrounding the temporary order, and,  
6 if the petitioner can show by clear and convincing evidence  
7 that the person being held has not complied or will not comply  
8 with appropriate treatment and contagion precautions as the  
9 department deems necessary, the court shall continue the order  
10 of protection for the person who has an infectious form of  
11 tuberculosis until completion of therapy, as deemed by the  
12 department. The court shall order regular review of the order  
13 by providing the person under an order of protection with a  
14 subsequent hearing within ninety days of the temporary order's  
15 issuance and every ninety days thereafter. The order of  
16 protection shall be terminated and the person shall be released  
17 if:

18 (1) at a hearing, the petitioner has not met  
19 its burden of showing by clear and convincing proof that the  
20 person under an order of protection has not completed therapy;  
21 or

22 (2) exceptional circumstances exist warranting  
23 the termination of the temporary order of protection.

24 J. The provisions of this section do not permit the  
25 forcible administration of medications.

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1           K. The proceedings of any hearing held pursuant to  
2 the section shall be recorded stenographically, electronically  
3 or mechanically or by other appropriate means. The proceedings  
4 shall be closed to the general public and the records shall be  
5 sealed from public inspection.

6           L. A person who in good faith reports that another  
7 person has an infectious form of tuberculosis shall not be held  
8 liable for civil damages as a result of the report; provided  
9 that the person reported as having an infectious form of  
10 tuberculosis shall have the right to sue for damages sustained  
11 as a result of negligent or intentional reporting of inaccurate  
12 information or the disclosure of information to an unauthorized  
13 person.

14           M. For purposes of this section:

15                 (1) "completion of therapy" means completion  
16 of the prescribed therapy, as determined by the department  
17 based upon published national consensus tuberculosis treatment  
18 guidelines;

19                 (2) "court" means the district court of the  
20 judicial district where the person who is alleged to have an  
21 infectious form of tuberculosis resides or is found;

22                 (3) "department" means the department of  
23 health or a person designated by the secretary of health to  
24 carry out the duties provided in this section;

25                 (4) "directly observed therapy" means a

1 methodology for promoting patient adherence in which a health  
2 care provider or trained designee witnesses the patient ingest  
3 each dose of medication until the completion of prescribed  
4 therapy for tuberculosis;

5 (5) "infectious form of tuberculosis" means  
6 a form of tuberculosis disease that has been determined,  
7 through whichever diagnostic procedures the department deems  
8 appropriate, to be in a communicable or infectious state  
9 because the patient is capable of expelling tubercle bacilli  
10 into the air; and

11 (6) "isolation" means:

12 (a) home isolation;

13 (b) home isolation with electronic  
14 monitoring;

15 (c) isolation in a hospital or other  
16 health care facility negative pressure room monitored by a  
17 security officer;

18 (d) isolation in a state health care  
19 facility negative pressure room with appropriate security  
20 provisions; or

21 (e) isolation in a prison or detention  
22 center negative pressure room with an appropriate level of  
23 medical care."