

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:

"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 infectious form of tuberculosis, the department shall prescribe the person a treatment plan meeting the department's therapeutic specifications for the infectious form of tuberculosis. The treatment plan shall include a notice to the person that failure to comply with the treatment plan will result in immediate initiation of court action to ensure compliance, as set forth in this section.

C. When the department has knowledge that a person who has an infectious form of tuberculosis has failed to

comply with the department's treatment plan as described in Subsection B of this section, the department shall petition the court for an order of protection for the person who has an infectious form of tuberculosis to comply with whichever of the following courses of action the department deems appropriate:

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

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

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

(1) has an infectious form of tuberculosis or presents a substantial likelihood of having an infectious form of tuberculosis based on credible medical evidence;

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

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

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

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

(a) administer a program of directly observed therapy;

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

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

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

(3) within five days after the granting of

the temporary order of protection, hold an evidentiary hearing to determine if the court shall continue the order of protection.

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

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

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

H. Counsel may be retained by the person under the temporary order of protection or shall be appointed by the court if the court determines that the person held cannot afford legal representation or if the court determines that appointment of counsel is required in the interest of justice.

I. At the evidentiary hearing, the court shall review the circumstances surrounding the temporary order, and, if the petitioner can show by clear and convincing evidence that the person being held has not complied or will not comply

with appropriate treatment and contagion precautions as the department deems necessary, the court shall continue the order of protection for the person who has an infectious form of tuberculosis until completion of therapy, as deemed by the department. The court shall order regular review of the order by providing the person under an order of protection with a subsequent hearing within ninety days of the temporary order's issuance and every ninety days thereafter. The order of protection shall be terminated and the person shall be released if:

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

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

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

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

L. A person who in good faith reports that another

person has an infectious form of tuberculosis shall not be held liable for civil damages as a result of the report; provided that the person reported as having an infectious form of tuberculosis shall have the right to sue for damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of information to an unauthorized person.

M. For purposes of this section:

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

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

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

(4) "directly observed therapy" means a methodology for promoting patient adherence in which a health care provider or trained designee witnesses the patient ingest each dose of medication until the completion of prescribed therapy for tuberculosis;

(5) "infectious form of tuberculosis" means a form of tuberculosis disease that has been determined,

through whichever diagnostic procedures the department deems appropriate, to be in a communicable or infectious state because the patient is capable of expelling tubercle bacilli into the air; and

(6) "isolation" means:

(a) home isolation;

(b) home isolation with electronic monitoring;

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

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

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

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