



Southeastern National Tuberculosis Center
SHARE • LEARN • CURE

Tuberculosis Control

Legal Authority in the Commonwealth of Virginia

Robin V. Kurz, Special Counsel
Virginia Department of Health

September 23, 2010

Federal Authority

- 42 U.S.C. § 264; 42 C.F.R. Parts 70 and 71
 - Government may detain those coming in from a foreign country
 - Government may detain those making interstate travel if:
 - Communicable
 - Precommunicable if would cause a public health emergency if transmitted




State Authority

- 10th Amendment to U.S. Constitution
 - “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.”
 - *Jacobsen v. Massachusetts (1905)*
States have the “police power” authority to force people to be vaccinated.
Indirectly referenced quarantine




Virginia Law

- Reporting
- Treatment and Management
- Isolation



Definition of TB

- § [32.1-49.1](#). Definitions.
- "Active tuberculosis disease" means a communicable disease caused by an airborne microorganism and meeting additional clinical criteria
- "Tubercle bacilli" means disease-causing organisms belonging to the Mycobacterium tuberculosis complex and includes Mycobacterium tuberculosis, Mycobacterium bovis, Mycobacterium africanum or other members as established by the Commissioner.
- "Tuberculosis" means a disease caused by tubercle bacilli.
- See handout for complete definitions

Reporting of TB – Initial

- Physicians required to report
 - Tuberculosis, active disease
 - Tuberculosis infection in children < 4 years of age
- Laboratories required to report:
 1. Acid fast bacilli by microscopic examination;
 2. Mycobacterial identification—preliminary and final identification by culture or nucleic acid detection;
 3. Drug susceptibility test results for *M. tuberculosis*
- Persons in charge of medical care facility.

Initial Reporting

- Report to local health department
- Active TB reported by rapid means
 - Within 24 hours
 - By facsimile, phone, or electronically



12 VAC 5-90-80, 12 VAC 5-90-90,
12 VAC 5-90-225



Secondary Report

- Secondary report 1-2 weeks after initial report and include:
 - Date and results of TST
 - Date and results of chest radiographs
 - Dates and results of bacteriologic or pathologic testing
 - The drug regimen
 - Date and results of drug susceptibility testing
 - HIV status
 - Contact screening info
 - Contact information for physician



12 VAC 5-90-225



Subsequent Report

- Subsequent reports when:
 - Clinical status changes
 - Treatment regimen changes
 - Treatment ceases
 - Updates to lab results, treatment adherence
 - Updates to provider contact information
 - Other clinical information



12 VAC 5-90-225



Reporting of TB

- Reports by laboratories – additional requirement



Va. Code § 32.1-50; 12 VAC 5-90



Reporting of TB

- Person making report immune from civil liability or criminal penalty for making report unless acting with gross negligence or malicious intent.
- VDH shall not disclose to the public the name of any person reported or the name of any person making a report.

Va. Code §§ 32.1-38, 32.1-41.



Contact Tracing

- Local health director may
 - conduct contact tracing (confidential)
 - recommend appropriate health control measures



12 VAC 5-90-100



Treatment of TB

- Any local health director may request one suspected of having active TB to be examined immediately by:
 - Physician or nurse practitioner at own expense if approved by the local health director or
 - By the local health director at no cost

Va. Code § 32.1-50



Treatment Plan

- Treating physician and medical care facility shall develop an individualized treatment plan with:
 - Patient address and name of provider
 - Planned course of drug therapy
 - Estimated date of completion
 - Means of ensuring successful completion

Va. Code § 32.1-50.1.



Treatment Plan

- Plan submitted to local health director for approval.
- If disagreement between health director and provider, Commissioner shall have the authority to settle.
- Upon request, person in charge of medical facility or physician shall submit documentation of adherence to plan.

Va. Code § 32.1-50.1.



Noncompliance

- Investigation
- Counseling Order
- Outpatient Treatment Order
- Emergency Order
- Isolation Order



Va. Code §§ 32.1-48.01 to 48.04



Isolation vs. Quarantine

- Isolation: separation (for period of communicability) of known infected persons to prevent transmission of an infectious agent.



- Quarantine: restriction of activities during the incubation period of healthy persons exposed to a communicable disease to prevent transmission.

Va. Code § 32.1-48.06



Counseling Order

- If two verified reports or medical evidence that patient engaging in at risk behavior, Commissioner or designee may conduct an investigation.
- Then, Commissioner or her designee may issue a counseling order
 - At risk behavior
 - Precautions and need to use

Va. Code § 32.1-48.02



Outpatient Treatment Order

- Outpatient Treatment Order if:
 - Person refused or failed to adhere to treatment and
 - Despite counseling is engaging in conduct that places uninfected persons at risk
- Orders person to:
 - Report to local health department to receive
 - Treatment
 - Education

Va. Code § 32.1-48.02



Temporary Detention

- If person counseled is still engaging in at-risk behavior, Commissioner or her designee may petition the general district court for the person to appear before the court.
- Order of temporary detention.
- Person held for period not to exceed 48 hours unless holiday or weekend.
- Not held in a jail

Va. Code § 32.1-48.03



Emergency Isolation Order

- Emergency order by Commissioner if:
 - Documented and appropriate counseling
 - Conduct that places uninfected persons at risk and
 - Imminent threat to the health of others
 - Must also show:
 - Disobeyed outpatient treatment order
 - History of failure to adhere to treatment OR
 - Person indicated will not comply with treatment

Va. Code § 32.1-48.02



Emergency Isolation Order

- Emergency Order
 - Custody not to exceed 48 hours (or next day not weekend or holiday)
 - In least restrictive willing facility providing protection to others and appropriate treatment
 - Cannot be in a jail
 - All state and local law enforcement officers authorized to take custody of the subject of the order

Va. Code § 32.1-48.02



Order of Isolation



- Isolation hearing
 - Held in General District Court
 - Held within 48 hours of emergency detention or next business day if holiday or weekend
 - Person receives notice prior to hearing of basis for isolation and right of appeal
 - Right to counsel and interpreter

Va. Code § 32.1-48.04



Order of Isolation



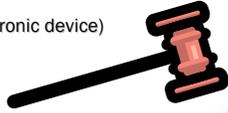
- Order of isolation if show:
 - Person infected with TB
 - Engaging in at-risk behavior
 - Demonstrated an intentional disregard for the health of the public by placing others at risk for infection
 - No reasonable alternative means of reducing risk to public health

Va. Code § 32.1-48.04



Order of Isolation

- Order valid for
 - 120 days or
 - Shorter time if Commissioner, his designee, or the court find person no long poses a substantial threat to the health of others
- Order in:
 - Residence (may be with electronic device)
 - Institution
 - Other place



Order of Isolation

- Order of isolation may include participation in counseling or educational programs
- After no longer a threat, order may be solely for counseling or education

Order of Isolation

- Order of isolation – subject's has right to:
 - Appeal to the circuit court within 30 days
 - Right to counsel
 - Interpreter
 - Choose own course of treatment
 - Responsible for expenses of treatment

Conditions for Invoking Isolation

- Implemented in “least restrictive means.”
- “Least restrictive” means the minimal limitation of the freedom of movement and communication of an individual while under an order of isolation or an order of quarantine that also effectively protects unexposed and susceptible individuals from disease transmission.

Public Good **Civil Liberties**



12 VAC 5-90-10



Penalties

- Non-compliance with an order of isolation or quarantine:
 - Class 1 misdemeanor (confinement for up to 12 months and/or \$2,500 fine)
 - Injunction
 - Civil Penalties
 - Every attorney for the Commonwealth shall have the duty to prosecute, without delay, any violation of this chapter in accordance with the penalties set forth in § 32.1-27.



Va. Code §32.1-48.014



Health Records Privacy

- The Commissioner has the authority to examine any health records of any person subject to an order of quarantine or isolation. A covered entity may disclose protected health information to the Commissioner without obtaining consent from the patient pursuant to this article.
- The Commissioner may re-disclose health information pursuant to the regulations concerning patient privacy promulgated by the federal Department of Health and Human Services (“HIPAA”)
- Information disclosed to the Commissioner shall be held confidential and shall not be disclosed pursuant to the provisions of subdivision 17 of § 2.2-3705.5.

Va. Code § 32.1-48.015



Process of Building Case

- Extensive documentation
 - Counseling
 - Treatment Orders
 - Noncompliance
- Call AG's Office and TB Control to discuss



Arrange Details

- Arrange for site of isolation
 - Appropriate site
 - Payment
 - Medication and treatment
- Arrange for pick up of patient
 - Which law enforcement
 - Legal duty to inform public safety officer of risk of exposure. Va. Code § 32.1-116.3
 - Personal protection



Hearing

- Thoroughly documented medical records
 - Va. Code § 8.01-390
- Witnesses
 - Physician/expert
 - Nurse/outreach worker



Hearing Structure

- Expert witness (possibly health director)
 - Qualify the expert
 - Explain disease
 - What causes it, how it progresses, how it is transmitted, how it is cured, incubation period, how managed and prevented
 - Review of patient's record, conclusions, and recommendations
- Fact witnesses (nurse, outreach worker)
 - Details of patient's noncompliance
- Defense case



Isolation

- Arrange for treatment and medication
- Payment
- Rights of patient
 - Phone, letters
 - Clothing
 - Other



Voluntary Compliance

- Most important part of TB control
- Outreach workers
- Flexibility with medication and isolation sites
- Bonds with nurses/outreach workers



Principal Resources

- Virginia Code
 - §§ 32.1-48.02 to 32.1-48.04, 32.1-49.1 to 32.1-50.2, 32.1-35 to 32.1-41
- Virginia Administrative Code
 - 12 VAC 5-90 et seq.
 - Other (see infra)
- Federal law
 - 42 U.S.C. § 264
 - 42 C.F.R Parts 70-71
 - 12 VAC 5-90 et seq. Disease Control Regulations



Other TB Laws: EMS

- EMS shall not refuse to transport a person with a communicable disease.
- Transferring health care facility shall alert EMS agency of the condition of a patient with a communicable disease and the types of precautions to take.
- Physician who later determines transported patient has communicable disease shall notify EMS agency.

Va. Code § 32.1-116.3



Other TB laws: Screening

Populations that require screening for TB include:

- school employees
- residents of family group homes, before admission
- school bus drivers
- personnel of home and community-based services
- companion services
- consumer directed personal care and respite service aides
- adult services homemaker providers
- employees of adult day care centers
- staff and children accepted to child caring institutions
- employees and volunteers of family daycare systems

(see handout for complete list and VA Code)