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 characterized by the presence of either (i) a specimen of sputum or other bodily fluid or tissue that has been found to contain tubercle bacilli as evidenced by culture or other definitive diagnostic test as established by the Commissioner, (ii) a specimen of sputum or other bodily fluid or tissue that is suspected to contain tubercle bacilli as evidenced by smear and sufficient clinical and radiographic evidence of active tuberculosis disease is present as determined by a physician licensed to practice medicine in the Commonwealth, or (iii) sufficient clinical and radiographic evidence of active tuberculosis disease as determined by the Commissioner is present, but a specimen of sputum or other bodily fluid or tissue containing or suspected to contain tubercle bacilli is unobtainable.
  - "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.

Reporting of TB - Initial

- Physicians and directors of medical care facilities are 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 to be reported immediately by the most rapid means available.
- Details of report contained in 12 VAC 90-225.

Secondary Report

- Secondary report simultaneously or within 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

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

Reporting of TB

- Reports by laboratories – additional requirements.
  - Submit sample to DCLS or other lab designated by the Board.

Contact Tracing

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

**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

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**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.

**Noncompliance**

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

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**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.
**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

**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

**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

**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

**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
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


Order of Isolation

- Order valid for
  - 120 days or
  - Shorter time if Commissioner, his designee, or the court find person no longer 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.

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.
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
  - 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

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