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(APERMA)  
Legal Defense Group**

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**DATE: FEBRUARY 28, 2011**

**TO: COUNTY JUDGES AND SHERIFFS**

**FROM: RALPH C. OHM**

**RE: TB TESTING IN JAIL FACILITIES**

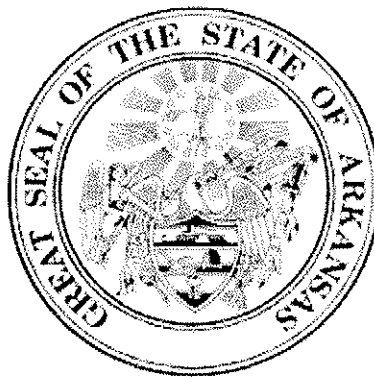
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The purpose of this memo is to make you aware of the most recent changes to the tuberculosis control rules that have been adopted by the Arkansas State Board of Health. Non-compliance with these regulations may result in a fine of up to \$100. More importantly, if an inmate in your detention center contracts tuberculosis from another inmate and these regulations were not being followed, this could possibly subject your County to liability in a civil suit, resulting in a substantial judgment.

A copy of these regulations has been attached to this memo. Please pay particular attention to Section VII, pertaining to correctional facilities. I would strongly suggest you adopt these regulations and amend your jail policy to note compliance with the law entitled "Rules Pertaining to Communicable Disease Control – Tuberculosis" that was adopted by the Arkansas State Board of Health on July 23, 2009.

If you have any questions about these regulations, please feel free to call my office and speak with either myself or Nick Windle about this matter.

**RULES PERTAINING TO:  
THE CONTROL OF  
COMMUNICABLE DISEASES -  
TUBERCULOSIS**



**ARKANSAS DEPARTMENT OF HEALTH  
2009**

**RULES PERTAINING TO THE CONTROL OF  
COMMUNICABLE DISEASES - TUBERCULOSIS**

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SECTION I. AUTHORITY.

The following amendments are hereby adopted pursuant to the authority conferred by Act 161 of 1955, as amended and Act 96 of 1913, as amended, the same being Ark. Code Ann. 20-15-701 et seq. and Ark. Code Ann. 20-7-109 et. seq.

SECTION II. PURPOSE.

The purpose of this amendment to the Rules and Regulations Pertaining to Communicable Diseases is to provide for the prevention and control of tuberculosis and to protect the public health, welfare and safety of the citizens of Arkansas.

SECTION III. DEFINITIONS.

- A. Certificate of Health means a certificate issued by the Department verifying that the holder has complied with the relevant diagnostic screening, or treatment procedures prescribed or directed by the Communicable Disease Rules and Regulations and/or the Arkansas Tuberculosis Control Manual.
- B. Correctional facility means any state prison or jail, detention center, or other similar facility wherein persons are incarcerated or held for correctional purposes.
- C. Department means Arkansas Department of Health.

- D. Shelter facility means any shelter for the homeless or disadvantaged, shelter for battered women, or other similar facility where persons are routinely housed for fourteen or more days.
- E. Emergency medical service means an Emergency Medical Service licensed or certified by the Department.
- F. Hospital means a facility defined by Ark. Code Ann. § 20-9-201(3).
- G. Long-term care facility means a facility defined by Ark. Code Ann. § 20-10-101(7).
- H. Day services facility means any private or parochial school, or any licensed public or private adult or child day care center, headstart program, outpatient alcohol/drug abuse treatment program, sheltered workshop, migrant worker center or any other licensed outpatient or day services activity.
- I. Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, agency, political subdivision of this state, of any other state, or political subdivision or agency thereof.
- J. Tuberculosis prevention means following the recommendations of the Department regarding treatment for prevention of tuberculosis.
- K. Related medical facility or Related medical service means a facility or service other than a hospital, including but not limited to rehabilitation hospitals, psychiatric hospitals, Human Development Centers, alcohol/drug abuse in-patient treatment centers, Arkansas State Veterans Home, Veteran's Hospital Domiciliary, home health agencies, hospices, renal dialysis units, community health centers, community health clinics serving populations with a high prevalence for tuberculosis infection, or other related medical facilities or services.
- L. Public school means any public school or kindergarten.
- M. Tuberculosis manual means the manual of policies and procedures developed by the Department which includes rules and guidelines for specific definitions of "tuberculosis screening" for certain groups and the prevention, control and treatment of tuberculosis.
- N. Tuberculosis screening means (1) in the case of a person tested for the first time or one who has not experienced a positive test in the past - an intra-dermal tuberculin skin test, and thereafter an annual skin test; or (2) in the case of a person who has experienced a positive test in the past and/or who tests positive - a chest radiograph conducted by the Department or one interpreted by a trained radiologist unless one has been performed within the past three months; or (3) such other screening as prescribed, directed or recommended by an employee or agent of the Department.

SECTION IV. GENERAL REQUIREMENTS.

- A. Penalty.  
Any person who is found guilty of a violation of any of the provisions of these Rules and Regulations shall be guilty of a violation of Ark. Code Ann. § 20-7-101.
- B. Reporting Requirements.
  - 1. It shall be the duty of every physician, nurse practitioner, nurse, or health care

worker to report to the Department in addition to the requirements set forth in other sections of these rules the following information concerning tuberculosis:

- a) Acid fast bacilli in smear or *M. tuberculosis* in culture
- b) Other significant evidence, pending bacteriological proof
  - (1) Chest X-ray shadows suggestive of Tuberculosis (apical infiltrate, cavity, etc.)
  - (2) Extra-pulmonary Tuberculosis (meningeal, bone, kidney, other)
  - (3) Primary pulmonary tuberculosis cases showing parenchymal infiltration or hilar node enlargement or pleural effusion

2. It shall be the responsibility of the person in charge of any public school or day services facility to encourage any person/employee who manifests a persistent cough for more than 3-4 weeks after a respiratory infection, or who has a fever or significant loss of weight, to go to the Health Department or personal physician.

C. Classification of Tuberculosis shall be pursuant to the latest version of Diagnostic Standards and Classification of Tuberculosis and Other Mycobacterial Diseases, American Lung Association, New York, 1989.

#### SECTION V. HOSPITALS.

Hospitals shall be responsible for compliance with these Rules and Regulations as well as Board of Health Rules and Regulations for Hospitals and Related Institutions in Arkansas.

- A. Each hospital employee, health worker, medical staff member (physician) who has contact with hospital patients shall receive annual tuberculosis screening and tuberculosis prevention (See Section 4, Definitions).
- B. Each hospital shall adopt and enforce a policy which ensures that tuberculosis screening and tuberculosis prevention (See Section 4, Definitions) is conducted for all employees, health workers, and medical staff (physicians) who have contact with patients.

#### SECTION VI. LONG TERM CARE FACILITIES.

Long-term care facilities shall be responsible for compliance with these Rules and Regulations as well as the Rules and Regulations governing Long-Term Care Facilities issued by the Arkansas Department of Human Services.

- A. Each employee, health worker, medical staff member (physician) of any long term care facility who has contact with long term care patients or residents shall receive tuberculosis screening and tuberculosis prevention (See Section 4, Definitions).
- B. Prior to employment and each year thereafter, each employee, health worker, medical staff member (physician) of any long term care facility who has contact with long term care patients or residents shall obtain a certificate of health.

#### SECTION VII. CORRECTIONAL FACILITIES.

- A. Correctional facilities, regardless of inmate capacity, shall ensure that:

1. Each employee, worker, parole/probation officer, or other staff member of the facility who has contact with inmates or detainees receives tuberculosis screening and tuberculosis prevention (See Section 4, Definitions); and
  2. Prior to employment and each year thereafter, each employee, worker, parole/probation officer, or other staff member of the facility who has contact with inmates or detainees shall obtain a certificate of health or documented results of tuberculosis screening as outlined in the Arkansas Tuberculosis Control Manual.
- B. Jails and detention centers housing fifty or more persons shall meet the following requirement: Each inmate/detainee of a jail or detention center who is expected to be incarcerated for 14 days or more will receive tuberculosis screening and tuberculosis prevention (see Section IV Definitions).
- C. Other correctional facilities shall meet the following requirements:
1. Each inmate or detainee of a correctional facility shall receive tuberculosis screening and tuberculosis prevention (See Section 4, Definitions).
  2. The person having responsibility for the management of a correctional facility shall be responsible for compliance with these Rules and Regulations. Each correctional facility shall be responsible for compliance with these Rules and Regulations. Each correctional facility shall designate an appropriately trained infection control officer who shall be responsible for operating a tuberculosis prevention and control program in the institution. Multi-institutional systems shall have a qualified coordinator as well as an official at each unit to oversee tuberculosis-control activities throughout the system. The correctional facility shall have written procedures outlining the responsibilities of each official, including a copy of each official's job performance plan. These procedures shall include provisions for (1) surveillance, (2) containment, and (3) assessment.
    - a) Surveillance shall include identification and reporting to the Department of all tuberculin reactors equal to or greater than 10 mm on inmates. The Department will be responsible for evaluation and recommendation of appropriate therapy.
    - b) Appropriate containment procedures shall be developed to reduce the chance of transmission of tuberculosis.
    - c) Appropriate diagnostic, treatment, prevention, and laboratory services shall be available. Environmental factors conducive to the spread of tuberculosis, such as poor ventilation, shall be corrected. Persons undergoing treatment or preventive therapy shall be carefully monitored for compliance and to detect drug toxicity to ensure that the recommended course of treatment is completed. The infection control officer shall notify the Department upon discharging any inmate who is receiving medication for tuberculosis and coordinate with Department officials to ensure appropriate follow-up of paroled inmates for completion of treatment.
    - d) Procedures shall be developed to ensure that persons in charge of a correctional facility are aware of the responsibility for the surveillance and containment activities within the institution.

- e) Questions concerning surveillance, containment or assessment and treatment shall be sought by reference to the Tuberculosis Manual of the Arkansas Department of Health or telephone consultation with the Tuberculosis Program Medical Director or designee.
  - f) The person in charge of the correctional facility will cooperate with the Department Tuberculosis Program in developing and updating policies, procedures, and record systems for tuberculosis control. The Department will provide epidemiologic and management assistance to correctional facilities, including on-site consultation and periodic reevaluation. Where appropriate, correctional facilities shall cooperate with the Department and develop programs of in-service training for correctional facility staff (e.g., to perform, read, and record tuberculin skin tests; identify signs and symptoms of tuberculosis; initiate and observe therapy; monitor for side effects; collect diagnostic specimens; educate inmates regarding tuberculosis; maintain record systems). The correctional facility will work with the Department regarding the tuberculin testing of nonincarcerated contacts of persons with active tuberculosis identified in these facilities.
  - g) All anti-tuberculosis medication within correctional facilities shall be administered under direct observation by correctional facility staff. Directly observing the swallowing of medication is essential to prevent the development of strains of tuberculosis that are resistant to current effective medications.
  - h) Correctional facilities shall work with Department staff to arrange continuing therapy for inmates when released while receiving tuberculosis treatment or preventive therapy. Registries shall be maintained with updated medical information on all current tuberculosis cases including those in correctional facilities.
  - i) Correctional facilities shall work with the Department officials to develop and implement an HIV prevention program, to identify persons practicing high risk behaviors, to counsel such persons in an effort to reduce high-risk behaviors among inmates.
3. Prior to commencement of construction of any correctional facility the person(s) responsible for the control and operating of the facility shall furnish a statement that he/she has consulted with the Department concerning the architectural design concerning the feasibility of germicidal lights in appropriate areas.

SECTION VIII. SHELTER FACILITIES.

The person in charge of each shelter facility shall be responsible for compliance with these Rules and Regulations.

- A. Each employee or other worker of a shelter facility who has regular contact with residents or clients shall receive tuberculosis screening and tuberculosis prevention (See Section 4, Definitions).
- B. Prior to employment and each year thereafter, each employee or other worker of a shelter facility who has regular contact with residents or clients shall obtain a certificate of health

or documented results of tuberculosis screening as outlined in the Arkansas Tuberculosis Control Manual.

- C. Each resident of a shelter facility who is likely to remain for a period of at least fourteen days shall, upon arrival, receive tuberculosis screening and tuberculosis prevention (See Section 4, Definitions).

#### SECTION IX. EMERGENCY MEDICAL SERVICES.

Emergency Medical Services shall be responsible for compliance with these Rules and Regulations as well as the Board of Health Rules and Regulations for Emergency Medical Services.

- A. In accordance with the Arkansas Tuberculosis Control Manual, each licensed ambulance service shall adopt and enforce a policy which ensures that tuberculosis screening and tuberculosis prevention (See Section 4, Definitions) is conducted for all employees, paid or volunteer, who have contact with patients.
- B. Prior to employment and each year thereafter, the service shall require a certificate of health or another form of documentation of tuberculosis screening.

#### SECTION X. DAY SERVICES FACILITY.

- A. Each employee or other staff member of any day services facility who has contact with patients or clients shall receive tuberculosis screening and tuberculosis prevention (See Section 4, Definitions).
- B. Prior to employment and each year thereafter, each employee or other staff member of any day services facility who has contact with patients or clients shall obtain a certificate of health or documented results of tuberculosis screening as outlined in the Arkansas Tuberculosis Control Manual.

#### SECTION XI. PUBLIC SCHOOLS.

- A. Every newly hired public school employee within this state, prior to beginning employment each school year, shall present to the secretary of the board of directors of the employing district a certificate of health dated not more than ninety (90) days prior to the date of the presentation stating that the employee is free from tuberculosis. However, a newly hired employee who has had the required screening performed in the United States within six (6) months prior to employment will not be required to have it repeated, provided that the employee presents documentation to the hiring school district in accordance with these rules.
- B. The status of the individual regarding possible tuberculosis infection must be determined by a method prescribed by regulation of the State Board of Health, and reactors must undergo sufficient additional tests prescribed by regulation of the State Board of Health and shall be scheduled for a periodic reexamination according to their risk status.
- C. Certificates of health stating that public school employees are free from tuberculosis infection may be issued by a regularly licensed physician or regularly constituted health authority, but interpretation of any X-Ray film must be made by a competent roentgenologist or physician experienced in tuberculosis.



SECTION XII. RELATED MEDICAL FACILITIES.

The person in charge of each facility shall be responsible for compliance with these Rules and Regulations.

- A. Each employee, health worker, medical staff member (physician) who has contact with patients or clients shall receive tuberculosis screening and tuberculosis prevention (See Section 4, Definitions).
- B. Prior to employment and each year thereafter, each employee, health worker, medical staff member (physician) who has contact with patients or clients shall obtain a certificate of health or documented results of tuberculosis screening as outlined in the Arkansas Tuberculosis Control Manual.

SECTION XIII. CONTROL, PREVENTION AND PROCEDURES FOR ISOLATION.

- A. Involuntary Examinations.
  - 1. When the state, county, or city health officer shall have reasonable grounds to believe that any person has tuberculosis in active state or in a communicable form and who will not voluntarily seek a medical examination or treatment, the health officer is authorized to cause the person to be apprehended and detained for the necessary tests and examinations, including an approved chest X-ray, sputum examination, and other approved laboratory tests to ascertain the presence of tuberculosis.
  - 2. If active tuberculosis is found, it shall then be the duty of the health officer to make an investigation of the person to determine whether the conduct of the person is suitable for outpatient therapy or whether control of the case may require isolation.
- B. Petition To Isolate Patient.
  - 1. If the health officer finds that the circumstances are not suitable for proper isolation or contagion control of the case by any type of local quarantine and the person will not voluntarily seek medical treatment and is a source of danger to others, then the health officer shall petition the probate court of the county where the person is found to order the admission of the person to any state-owned and operated hospital or any other hospital that is equipped to treat tuberculosis under the conditions enumerated in Ark. Code Ann. § 20-15-707(a).
  - 2. The health officer shall set forth in a petition a summary of the factual basis of the determination that the circumstances are not suitable for proper contagion control of the case as an out-patient and that the person will not voluntarily seek medical treatment and is a source of danger to others.
- C. Notice of Petition and Hearing.
  - 1. Upon receiving the petition, the court shall fix a date for a hearing on the petition and shall cause notice of the petition, with the time and place for hearing to be served personally at least seven (7) days before the hearing, upon the person who is afflicted with tuberculosis and alleged to be dangerous to others.
  - 2. During the time the petition is pending, the person shall be subject to the local

quarantine or restrictions of his movements placed on him by the health officer for the protection of the public health.

D. Hearing.

The petition shall be heard in open court, and the respondent to the petition shall have the privilege of counsel of his own selection.

E. Commitment.

1. If upon hearing of the petition, the court finds that the circumstances are not suitable for proper isolation or contagion control of the case by any type of local quarantine and that the person will not voluntarily seek medical treatment and is a source of danger to others, the court shall order the commitment of the person to a hospital as petitioned for.
2. The superintendent of the institution to which the person is committed shall direct that the person be placed apart from others in a room with a properly installed and operational germicidal UV light and restrained from leaving the institution.

F. Observation of Rules and Regulations Required.

1. A person who is committed to a hospital under the provisions of this subchapter shall observe all the rules and regulations of the hospital.
2. The superintendent of the institution may file a complaint in the municipal or justice of peace court against a person committed to the institution under the provisions of this subchapter who willfully violates the rules and regulations of the institution or who conducts himself in a disorderly manner. A person so charged shall have the legal procedural rights of a person charged with disorderly conduct.

G. Discharge.

1. The superintendent of the institution to which a person has been committed under this subchapter may discharge the person so committed upon signing and placing among the records of the institution a statement that the person has obeyed the rules and regulations of the institution and that for the reasons set forth in the statement, in his judgment the person may be discharged without danger to the health and life of others.
2. The superintendent of the institution shall report each discharge with a full statement of reasons therefore at once to the Director of the Department, to the county health officer of the county where the person was committed, and to the clerk of the court from which the person was committed.

H. Violations of Commitment - Penalties.

1. A person committed to an institution who is found guilty of violating the rules and regulations of the institution or of conducting himself in a disorderly manner may be confined for a period not to exceed six (6) months in any place where persons convicted of disorderly conduct may be confined.
2. Any person committed to an institution pursuant to this subchapter, who shall leave or attempt to leave the institution without being properly discharged by the

