

ASSEMBLY, No. 1608

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 29, 1996

By Assemblywoman WRIGHT and Assemblyman DORIA

1 AN ACT protecting the public health against tuberculosis infection,
2 supplementing Title 26 of the Revised Statutes and repealing
3 R.S.30:9-57.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

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8 1. As used in this act:

9 "Active tuberculosis" or "active TB" means the diagnosis of a
10 person who has had a sputum smear or culture taken from a pulmonary
11 or laryngeal source which has tested positive for tuberculosis and the
12 person has not completed an appropriate prescribed course of
13 medication for tuberculosis. The diagnosis also applies to a person
14 who has had a smear or culture taken from an extra pulmonary source
15 which has tested positive for tuberculosis, and there is clinical
16 evidence or clinical suspicion of pulmonary tuberculosis disease and
17 the person has not completed an appropriate prescribed course of
18 medication for tuberculosis. A person also has active tuberculosis

19 when, in those cases where sputum smears or cultures are
20 unobtainable, the radiographic evidence, in addition to current clinical
21 evidence and laboratory tests is sufficient to establish a medical
22 diagnosis of pulmonary tuberculosis for which treatment is indicated.

23 A person who has active tuberculosis shall be considered infectious
24 until three consecutive sputum smears from a pulmonary or laryngeal
25 source collected on separate days at medically appropriate intervals
26 have tested negative for tuberculosis and the clinical symptoms of
27 tuberculosis have resolved or significantly improved.

28 "Commissioner" means the Commissioner of Health.

29 "Department" means the Department of Health.

30 "Health care provider" means a person who is directly involved in
31 making a clinical diagnosis and the prescribing of medication for which
32 the person is professionally qualified and is licensed or certified as
33 required by State law.

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35 2. When the commissioner determines that the public health or the
36 health of any person is endangered by a case of tuberculosis (TB), or
37 a suspected case of tuberculosis, he may issue an order necessary to

1 protect the public health and may make application to the court for
2 enforcement of such an order. In a court proceeding for enforcement,
3 the commissioner shall demonstrate the particular circumstances
4 constituting the necessity for the order. An order may include, but not
5 be limited to:

6 a. An order authorizing the commitment to a hospital or other
7 treatment facility for appropriate examination for tuberculosis of a
8 person who has active TB or who is suspected of having active TB and
9 who is unable or unwilling voluntarily to submit to an examination by
10 a physician or the department;

11 b. An order requiring a person who has active TB to complete an
12 appropriate prescribed course of medication for tuberculosis and, if
13 necessary, to follow required contagion precautions for tuberculosis;

14 c. An order requiring a person who has active TB and who is
15 unable or unwilling otherwise to complete an appropriate prescribed
16 course of medication for tuberculosis to follow a course of directly
17 observed therapy. For the purposes of this subsection, "directly
18 observed therapy" means a course of treatment for tuberculosis in
19 which the prescribed anti-tuberculosis medication is administered to
20 the person or taken by the person under direct observation of a health
21 care provider or his designee;

22 d. An order authorizing the transfer to a hospital or other treatment
23 facility of a person (1) who has active TB that is infectious or who
24 presents a substantial likelihood of having active TB that is infectious,
25 based upon epidemiologic evidence, clinical evidence, X-ray readings
26 or laboratory test results; and (2) when the department finds, based
27 on recognized infection control principles, that there is a substantial
28 likelihood the person may transmit tuberculosis to others because of
29 his inadequate separation from others; and

30 e. An order authorizing the transfer to a hospital or other treatment
31 facility of a person who (1) has active TB, or who has been reported
32 to the department as having active TB with no subsequent report to
33 the department of the completion of an appropriate prescribed course
34 of medication for tuberculosis; and (2) when there is a substantial
35 likelihood, based on the person's past or present behavior, that he
36 cannot be relied upon to participate in or to complete an appropriate
37 prescribed course of medication for tuberculosis and, if necessary, to
38 follow required contagion precautions for tuberculosis. Such behavior
39 may include, but is not limited to, refusal or failure to take medication
40 for tuberculosis, or refusal or failure to keep appointments for
41 treatment of tuberculosis, or refusal or failure to complete treatment
42 for tuberculosis or disregard for contagion precautions for
43 tuberculosis.

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45 3. The commissioner may temporarily commit a person to a
46 hospital or other place for examination or treatment if the person is the

1 subject of an order pursuant to section 2 of this act, without prior
2 court order. The commissioner shall thereafter make an application
3 for a court order continuing the commitment within five days after the
4 commitment, or, if the five-day period ends on a Saturday, Sunday or
5 legal holiday, by the end of the first business day following the
6 Saturday, Sunday or legal holiday, which application shall include a
7 request for an expedited hearing. In no event shall a person be held
8 for more than 10 days without a court order authorizing the
9 commitment. The commissioner shall seek further court review of the
10 commitment within 90 days following the initial court order
11 authorizing transfer and thereafter within 90 days of each subsequent
12 court review. In any court proceeding to enforce an order of the
13 commissioner for the commitment of a person issued pursuant to this
14 section or for review of the status of the person committed, the
15 commissioner shall prove the particular circumstances constituting the
16 necessity for the order by clear and convincing evidence. A person
17 who is subject to a commitment order shall have the right to be
18 represented by counsel and upon this request, counsel shall be
19 provided.

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21 4. a. An order of the commissioner pursuant to section 2 of this
22 act shall set forth:

23 (1) the legal authority under which the order is issued;

24 (2) an individualized assessment of the person's circumstances or
25 behavior constituting the basis for the issuance of the order; and

26 (3) the less restrictive treatment alternatives that were attempted
27 and were unsuccessful or the less restrictive treatment alternatives that
28 were considered and rejected, and the reasons for their rejection.

29 b. In addition to the requirements set forth in subsection a. of this
30 section, an order for the commitment of a person for examination or
31 treatment shall:

32 (1) include the purpose of the transfer;

33 (2) advise the person being committed that, whether or not he
34 requests release, the commissioner must obtain a court order
35 authorizing the transfer for examination or treatment within 10 days
36 following the initial commitment order, and that in no event shall the
37 person be held for more than 10 days without a court order, and that
38 the commissioner must thereafter seek court review of the
39 commitment within 90 days of that court order and within 90 days of
40 each subsequent court review; and

41 (3) advise the person being committed that he has the right to
42 arrange to be advised and represented by counsel or to have counsel
43 provided to him.

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45 5. a. A person who is committed solely pursuant to subsection a.
46 of section 2 of this act shall not continue to be held beyond the

1 minimum period of time required, with the exercise of all due
2 diligence, to make a medical determination of whether a person who
3 is suspected of having tuberculosis has active TB or whether a person
4 who has active TB is infectious. Further detention of the person shall
5 be authorized only upon the issuance of the commissioner's order
6 pursuant to subsections d. or e. of section 2 of this act.

7 b. A person who is committed solely pursuant to subsection d. of
8 section 2 of this act shall not continue to be held after he ceases to be
9 infectious or after the department ascertains that changed
10 circumstances exist that permit him to be adequately separated from
11 others so as to prevent transmission of tuberculosis after his release.

12 c. A person who is committed solely pursuant to subsection e. of
13 section 2 of this act shall not continue to be held after he has
14 completed an appropriate prescribed course of medication.

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16 6. The commissioner shall designate inpatient facilities which shall
17 be used for persons transferred for examination or treatment pursuant
18 to section 2 of this act. In making this determination, the
19 commissioner shall consider petitioning the federal government for use
20 of vacant federal property in the State which would be suitable as an
21 inpatient facility for tuberculosis patients.

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23 7. The commissioner, pursuant to the "Administrative Procedure
24 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
25 regulations to effectuate the purposes of this act, including, but not
26 limited to, those governing actions taken to ensure that: a person with
27 active TB completes his medication as prescribed, infection control
28 procedures are followed, and appropriate action is taken under legal
29 authority to implement the provisions of this act.

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31 8. R.S.30:9-57 is repealed.

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33 9. This act shall take effect on the 60th day after the date of
34 enactment.

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37 STATEMENT

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39 This bill grants the Commissioner of Health the authority to: issue
40 an order protecting the public health if the public health or the health
41 of any person is endangered by a case of TB or a suspected case of
42 TB, and to make application to the court for enforcement of that
43 order; and to temporarily commit a person to a hospital or other place
44 for examination or treatment if the person is the subject of an order
45 issued by the commissioner, without prior court order. The
46 commissioner is required to make an application for a court order

1 continuing the commitment within five days after the commitment, or,
2 if the five-day period ends on a Saturday, Sunday or legal holiday, by
3 the end of the first business day following the Saturday, Sunday or
4 legal holiday, which application shall include a request for an
5 expedited hearing.

6 The bill provides that a person shall not be held for more than 10
7 days without a court order authorizing the commitment, and that the
8 commissioner shall seek further court review of the commitment
9 within 90 days following the initial court order authorizing transfer
10 and thereafter within 90 days of each subsequent court review.

11 The bill repeals R.S.30:9-57 (which provides for the commitment
12 of persons with communicable TB to a hospital or other institution
13 designated by the Commissioner of Health), the provisions of which
14 are obviated by this bill.

15 The bill would take effect on the 60th day after the date of
16 enactment.

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21 Permits Commissioner of Health to commit persons with actual or
22 suspected TB for examination or treatment in certain cases.