


**Legal Issues in
Tuberculosis Control**

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TB Updates for the Community: Partnering to Eliminate TB July 23, 2009



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Organization of this Unit

1. Essentials of TB Control in Public Health Practice
2. General Legal Framework for Communicable Disease Control
3. Communicable Disease Control Law
4. Express TB Control Laws
5. Selected Issues in TB Control Law
6. TB Control Law in Practice

Essentials of TB Control in Public Health Practice

What is Tuberculosis (TB)?

- TB is an airborne, communicable disease caused by infection with the bacterium, *Mycobacterium tuberculosis*.
- Infection typically occurs when a person inhales droplet nuclei containing TB bacteria, aerosolized through coughing or sneezing of persons with active, infectious TB.
- An undiagnosed, untreated person with active TB disease has the potential to infect an estimated 10-14 people in a year.

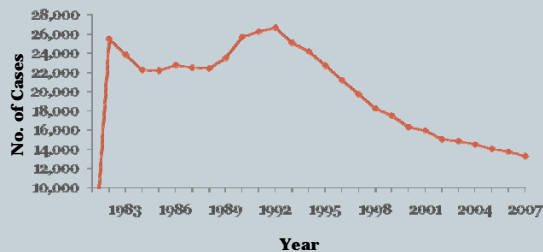
Infection Rates

- Infection with *M. tuberculosis*, however, does not necessarily result in TB disease.
 - On average, only 5-10% of those infected with *M. tuberculosis* will develop active disease.
 - About 5% of patients with Latent TB infection (LTBI) develop active TB within two to five years of becoming infected.
- However, persons with LTBI are potential vectors of TB transmission because they can progress to active TB.

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TB Incidence in the United States



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TB Infection Among At-Risk Populations

- High-risk populations in the U.S. include
 - Individuals with low socioeconomic status
 - Minorities
 - HIV/AIDS patients
 - Injecting drug users
 - Elderly
 - Foreign-born residents
 - Workers in higher risk occupational settings (e.g., corrections facilities, homeless shelters, nursing homes)

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Basic Components of TB Control

- The four basic components of TB control in the U.S.* are:

1. All cases of TB must be detected and reported to public health authorities, and the patients treated.
2. All close contacts of people with TB should be located and those at risk should be treated.
3. People with LTBI should be detected and treated so that progression to active TB disease status can be prevented.
4. High-risk settings where TB transmission may be more likely should be identified and procedures put into place to prevent transmissions.

*Source: American Thoracic Society, Centers for Disease Control and Prevention, and Infectious Diseases Society of America. Controlling Tuberculosis in the United States. *Am. J. Respir. Crit. Care Med.* 2005;172:1172-1227.

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General Legal Framework for Communicable Disease Control

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What is Public Health Law?

- “Laws (e.g., constitutional, statutory, regulatory, judicial, and policy) or legal processes at every level of government (e.g., federal, tribal, state, local) that are primarily designed to assure the conditions for people to be healthy.”*
- Public health laws create obligations for government to act, but also limit the government’s use of power through structural and rights-based constitutional limitations such as:
 1. Separation of powers
 2. Federalism
 3. Individual rights

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1. Separation of Powers

- The U.S. Constitution establishes three branches of government: legislative, executive, and judicial.
- Purpose: To ensure that one branch of government does not have free and unchecked authority to use law inappropriately or abusively.

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2. Federalism

- The distribution of powers between the federal government and the states.
- Federal powers:
 - Limited to powers enumerated in the Constitution
 - For public health purposes, primary sources of powers are the power to tax and spend and the regulation of interstate commerce
- State police powers:
 - Inherent authority of the state (and, through delegation, local government) to enact laws and promulgate regulations to protect, preserve and promote the health, safety, morals, and general welfare of the people
 - Broad and open-ended (though they may be trumped by federal powers via the Supremacy Clause)

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3. Limitations on Governmental Powers

- The tension between government powers to promote population's health and individual rights is addressed in the U.S. Supreme Court decision of *Jacobson v. Massachusetts* (1905):
 - **Facts:** Local regulation in Cambridge, MA required compulsory smallpox vaccinations. Jacobson was convicted for refusing to be vaccinated.
 - **Holding:** The U.S. Supreme Court affirmed Jacobson's conviction. Constitutional principles of liberty must be balanced against communal interests in protecting communal health.

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3. Limitations on Governmental Powers (continued)

- **Three foundational themes of individual rights in the U.S. Constitution (often found in state constitutions as well):**
 - **Substantive due process:** Government regulation must be fair and reasonable and must further a legitimate governmental objective.
 - **Procedural due process:** Government must provide fair process before depriving an individual of life, liberty, or property.
 - **Equal protection:** Government must treat similarly situated people in an equal manner.

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Communicable Disease Control Law

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State/Local Communicable Disease Control Law- based Functions

- Surveillance
- Reporting
- Testing and Screening
- Vaccination
- Medical Examination and Treatment
- Directly Observed Therapy (DOT)
- Detention
- Quarantine and Isolation

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Federal Communicable Disease Control Law

- Under authority of the Public Health Service Act (PHSA), CDC's Division of Global Migration and Quarantine can isolate or quarantine people arriving into the U.S. who have infectious TB.
- CDC may also isolate and quarantine persons moving between states or likely to infect others moving between states if they are:
 - (1) in a communicable stage of an enumerated communicable disease like TB; or
 - (2) pre-communicable, but the communicable disease would likely cause a public health emergency.

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Federal Communicable Disease Control



- CDC also is authorized generally to prevent the spread of communicable diseases across state lines if state or local health authorities:
 - (1) are not taking adequate measures; or
 - (2) request federal assistance.
- Federal immigration laws authorize the U.S. Immigration and Customs Enforcement (ICE) to
 - (1) deny entrance into the country to any undocumented person with TB; and
 - (2) remove any undocumented person who entered the country with TB (such individual is ineligible by law for admission into the U.S.).

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International Communicable Disease Controls



- International Health Regulations (IHR)
 - International agreement among 194 member states (including the U.S.) that creates a framework for cooperation during international public health emergencies.
 - Requires signatories to notify the World Health Organization (WHO) of:
 - Any event that may constitute a "public health emergency of international concern;" and
 - Significant evidence of public health risks outside their territory that may cause international spread of disease.
 - IHR may apply to cases of TB.

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Express TB Control Laws



Survey of Express TB Control Laws


- **Source:** *Study on Express Tuberculosis Control Laws in Selected U.S. Jurisdictions*
- Examines express TB control laws in 25 selected U.S. jurisdictions (24 states + NYC) under 6 categories:
 - Prevention of TB Cases (TB Control Programs)
 - Identification of TB Cases
 - Management of TB Cases
 - Safeguarding Rights
 - Considerations for Special Populations
 - Interjurisdictional Issues and Additional TB Provisions



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Survey of Express TB Control Laws

- **Express TB control laws** are defined as those jurisdiction-specific laws that:
 - Directly mention TB (or some derivative) in the body of the law; and
 - Whose main purpose is limited to the control of TB (and not the control of other communicable diseases).



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Express TB Control Law

- **Prevention of TB Cases (TB Control Programs)**
 - In 84% of the jurisdictions, express TB control laws seem to authorize various levels of government to regulate and establish TB control programs.
 - These vary in scope and specificity.
- **Identification of TB Cases**
 - 96% of jurisdictions appear to have express TB control laws concerning screening, examination, testing, and reporting.
 - Groups or classes of individuals subject to TB screening are typically specified.

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Express TB Control Law

- **Management of TB Cases**
 - Investigation: 68% of jurisdictions appear to feature express TB control laws regarding:
 - Persons undergoing treatment for TB; and
 - Persons who have had contact with individuals with TB (contact investigation or contact tracing).

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Express TB Control Law

- **Management of TB Cases**
 - Investigation: 68% of jurisdictions appear to feature express TB control laws regarding:
 - Persons undergoing treatment for TB; and
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Express TB Control Law

• Management of TB Cases

- Specific interventions
 - 68% of the jurisdictions appear to authorize emergency detention.
 - 44% appear to authorize quarantine.
 - 80% appear to authorize isolation.
 - 76% appear to require DOT, often triggered when TB patients fail to voluntarily adhere to health authorities' orders related to examination, testing, treatment, or isolation.

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Express TB Control Law

• Safeguarding Rights

- 68% of the jurisdictions feature express TB control laws that appear to address procedural rights of persons with TB who are subject to public health measures.
- 44% appear to protect TB patients' rights to privacy and confidentiality of information concerning their infections.
- 36% seem to take religious beliefs into consideration when implementing public health interventions for TB control, such as examination and treatment.

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Express TB Control Law

• Considerations for Special Populations

- 40% of the jurisdictions provide certain legal protections for distinct populations, such as people with visual or hearing impairments, inmate populations, and non-English speakers.

• Interjurisdictional Issues and Additional TB Provisions

- 32% appear to feature interjurisdictional provisions relating to coordination and communication with other jurisdictions regarding TB cases.
- Other provisions address civil liability, health education, duty to warn, visitation rights, disposal of TB-infected bodies, and insurance.

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Selected Issues in TB Control Law

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TB Screening

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- TB screening programs require practitioners to develop programs that narrowly achieve public health goals without overly burdening personal liberties.
- As a typical example, New York courts have upheld a City Board of Health regulation requiring teachers and other school employees to provide medical certificates asserting they are free from active TB.
- Screening programs that target groups for discriminatory purposes or are not based on individuals' heightened risk of infection may be challenged legally.

Health Information Privacy

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- Effective TB control involves the acquisition, use, and disclosure of sensitive, individually-identifiable health information concerning a patient's TB status through health care workers, public health officials, and potentially schools, prisons, employers, and others.
- Health information privacy implications invariably arise, and can be a barrier to TB control.

Health Information Privacy

- The **HIPAA Privacy Rule** allows disclosure of identifiable health data (including TB data) by health care practitioners to public health authorities without written authorization.
- The Family Education Rights and Privacy Act (**FERPA**) protects the privacy of student educational records by requiring advance written consent from students or their parents/guardians for the disclosure of identifiable information, subject to limited exceptions, including:
 - "Appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons." 20 U.S.C. §1232g(b)(1)(I).

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Isolation of Non-adherent TB Patients

- It is unconstitutional to physically force a person to undergo treatment without consent except in rare instances involving minors, persons with mental disabilities, or prisoners.
- However, patients who refuse to comply with prescribed TB treatment may be isolated until they no longer pose any risk to the public.
- Courts have usually upheld isolation or detention as long as basic procedural safeguards (e.g., notice, hearing before an impartial tribunal, access to representation, & opportunity to appeal) are provided.

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TB Prevention and Care among Vulnerable Populations

- Government is obligated to take reasonable steps to prevent TB and provide access to TB treatment for persons who are under state control, including those who are:
 - Detained under criminal sanctions (e.g., prison populations)
 - Detained under isolation orders or other civil or criminal restraints.

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Discrimination Against Persons with TB

- In *School Bd. of Nassau County, Fla. v. Arline* (U.S. S. Ct. 1987), the U.S. Supreme Court determined that a teacher with non-active TB could be considered disabled under the Federal Rehabilitation Act and hence protected from discrimination on the basis of having TB.
- Similar protections may also exist for people with active TB under the Americans with Disabilities Act (ADA).

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Immigration and Deportation of Undocumented TB Patients

- TB poses a challenge for immigration officials because deportation can disrupt treatment and contribute to the development of MDR-TB and XDR-TB.
- CDC and other organizations have sought to coordinate treatment for these individuals before, during, and after their removal.
- Southwestern states (e.g., CA, AZ, TX) have created programs to facilitate TB case management prior to, during, and after removal proceedings with CDC assistance.

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Interjurisdictional Coordination of TB Control

- Some TB cases require interjurisdictional coordination in control and prevention efforts.
- Example: 2007 situation where a U.S. citizen with drug-resistant TB traveled internationally by commercial airline despite health authorities' requests not to travel.

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Interjurisdictional Coordination of TB Control

- **International and domestic public health officials may contact DHS through CDC's Division of Global Migration and Quarantine if:**
 - Public health officials reasonably believe that an individual is infectious or likely to become infectious with TB (or another communicable disease) that would constitute a public health threat should the individual be permitted to board a flight.
 - There is reason to believe that the individual is unaware or will not adhere to recommendations against air travel.

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Texas and TB



Texas Reporting Requirements

- Chapter 81.042 allows reports of communicable diseases to be made to the local health authority.
- Section 81.045 requires a report to be made by an attending physician, coroner, or county medical examiner to the health authority “ . . . or the department if the physician knows or suspects that the person died of a reportable disease or other communicable disease that the physician believes may be a threat to the public health.”



Texas Control Measures

- Section 81.082 authorizes a health authority to institute “control measures” within his jurisdiction to control communicable disease...
- Section 81.083 authorizes the imposition of control measures on individuals if the “. . . health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease . . .” The order must be delivered to the individual in writing, and may be subjected to court ordered control methods if they do not comply with the health authority’s control measures.



Texas Control Measures

- Section 81.151 allows the health authority to request a municipal, county, or district attorney to apply “for a court order for the management of a person with a communicable disease.”
- Sections 81.161-162 Sections 81.161-.162 allow for an application for protective custody if accompanied by a statement from the health authority that the person’s communicable disease “. . . presents an immediate threat to the public health.”



Texas Treatment Guidelines

- Section 81.009 allows an exemption from medical treatment for reasons of religion. However it states that this exemption does not apply where the individual is “isolated or quarantined in an appropriate facility, and shall obey the rules, orders, and instructions of the department or health authority while in isolation or quarantine.”



Summary

- Law provides for...
 - Reporting of TB
 - Control of TB
 - Management of TB in non-compliant individuals



For additional information please visit:

CDC Public Health Law Program
www.cdc.gov/phlp

Centers for Law and the Public's Health:
A Collaborative: www.publichealthlaw.net