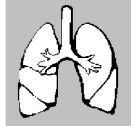




CDHS/CTCA JOINT GUIDELINES

Guidelines for the Civil Detention of Persistently Non-Adherent Tuberculosis Patients in California



The following guidelines have been developed by the California Department of Health Services, Tuberculosis Control Branch in consultation with the Executive Committee of the California Tuberculosis Controllers Association. These guidelines are official State Recommendations and have been endorsed by the California Tuberculosis Controllers Association.

These are guidelines for the civil detention of non-adherent tuberculosis (TB) patients in California; however, they are also applicable to the criminal detention process.

Purpose of Detention

Persistently non-adherent patients are those patients who cannot or will not take prescribed drugs over the entire period of time needed to ensure cure. Patients who do not adhere to an appropriate TB treatment regimen pose a public health risk. If they fail to complete their course of treatment, they may become infectious and transmit their infection to others. They may also develop drug resistant TB which is difficult, and sometimes impossible to treat. The goal of detention, therefore, is to ensure the completion of treatment.

This document is intended to guide local health jurisdictions in making plans for the detention of persistently non-adherent TB patients and/or patients who otherwise present a risk to the health of the public. Civil detention is preferable to criminal detention, but criminal prosecution and incarceration may still be needed in some cases.

These guidelines refer primarily to the detention of non-infectious TB patients for the purpose of completing an adequate course of therapy. However, detention may be necessary for certain patients for the period during which they are infectious. Respiratory isolation may not be possible in all long-term detention sites. Therefore detention in facilities other than long-term detention sites may be necessary when appropriate respiratory isolation facilities are not available at the long-term detention site.

Before detention is implemented, reasonable attempts should be made to address concomitant problems such as mental illness, homelessness, and substance abuse that may be contributing factors to non-adherence. If all appropriate and available less restrictive alternatives have been attempted and failed, or if the public safety is put at risk by delayed action, detention is appropriate. These concomitant problems, however, will continue to need attention during the period of detention. Consideration should be given to placing patients in detention sites equipped to deal with their major problems (e.g., mental illness and substance abuse) as well as provide treatment for TB if such facilities are otherwise appropriate.

Detention is a very costly intervention and should not be used when less costly interventions have not been attempted. While all local health jurisdictions should make certain less restrictive alternatives (e.g., incentives, enablers, directly observed therapy) available, the availability of resources for providing other less restrictive alternatives (e.g., social work interventions, psychiatric evaluation and treatment, drug and alcohol rehabilitation) will vary from health jurisdiction to health jurisdiction. It is important however, to give consideration to all available alternatives.

While detention is inherently restrictive, the goal should be to ensure the completion of TB treatment and the protection of the public health, not the punishment of the patient.

- C All patients may not need the same level of security, and detention may not be needed for the entire period of treatment. Appropriate detention options should be considered.
- C There should be procedural safeguards against unnecessary infringement on the rights of patients whose liberty has been restricted as provided by State law.

Guiding Principles and Legal Requirements

- I. The following guiding principles in the detention of persistently non-adherent TB patients are designed to protect the rights of the individual, but are also balanced with the legal, ethical, and moral responsibilities of public health officials to protect the public from TB.
 - A. Public health officials should make every reasonable attempt to assure that TB patients complete a prescribed course of therapy.
 - B. The decision to detain should be based on a comprehensive and individualized assessment of the patient, including:
 - 1. His or her medical condition
 - 2. Course of treatment
 - 3. Risk of transmission if therapy is not completed
 - 4. Barriers which prevent him or her from completing therapy
 - C. The conditions of civil detention should be as therapeutic as possible.
 - D. Detention sites, whether they be regional or local, should address the following needs of the patient:
 - 1. Physical
 - 2. Emotional
 - 3. Social
 - 4. Medical

- II. In addition to the principles stated above, the following laws should guide detention.
- A. Health and Safety Code (H&SC) Section 121367 requires that orders for detention include:
1. An individualized assessment of the person’s circumstances or behavior constituting the basis for the issuance of the order and the less restrictive alternatives that were attempted and were unsuccessful; **OR**
 2. The less restrictive alternatives which were considered and rejected, and the reasons the alternatives were rejected.
- B. H&SC Section 121366 requires that:
1. If a detained person has requested it, “the local health officer shall make an application for a court order authorizing continued detention within 72 hours after the request.”
 2. “In no event, shall any person be detained for more than 60 days without a court order authorizing the detention.”
 3. “The local health officer ... seek further court review of the detention within 90 days of the initial court order authorizing detention and thereafter within 90 days of each subsequent court review.”
- C. Patients may be detained only until they complete treatment (H&SC § 121368.c) but may not be forced to take medications (H&SC § 121365.b). They should not be subjected to surgery without informed consent.

Comprehensive Patient Assessments

A comprehensive assessment of each patient’s circumstances should include:

- I. The patient’s understanding (or lack thereof) of TB and why adherence to therapy is important
- II. History of non-adherence to treatment
- III. Attitudes toward adherence to treatment
- IV. Mental health and psycho-social history, cognitive status
- V. Medical history, including:
 - A. The risk to the patient and the community if treatment is not completed as recommended in the CDHS/CTCA, “Guidelines for the Treatment of Tuberculosis and Tuberculosis Infection for California,” (4/11/97) (1); and
 - B. The concomitant conditions which may influence response and adherence to treatment.
- VI. Drug or alcohol dependence

- VII. Living conditions (e.g., number of members in the household, availability of food, etc.)
- VIII. Homelessness or lack of stable housing
- IX. Socio-cultural considerations (ethnicity, customs, etc.)
- X. Language

Detention Facility Services

- I. Detention sites, whether they be regional or local, working in cooperation with the health officer of the jurisdiction which ordered the detention, should provide the following services:
 - A. Directly Observed Therapy (DOT)
 - B. Case management
 - C. Discharge planning in cooperation with health officials in the jurisdiction to which the patient will be released
 - D. Twenty-four hour security
 - E. Recreation facilities
 - F. Mental health counseling
 - G. Substance abuse counseling
 - H. Access to spiritual counseling
 - I. Reasonable accommodation of the patient's socio-cultural needs
 - J. Visiting privileges
 - K. Reasonable accommodation of persons with disabilities
 - L. Services in the patient's native language
- II. In addition, the detention facility should
 - A. Be properly licensed to provide these services
 - B. Have the ability to bill third parties (if appropriate)

Criteria for Early Release

- I. Generally, patients will be released when they have completed therapy and are cured. The local health officer may determine that early release is appropriate and either directly revoke the order for detention or request release from the courts depending on circumstances.
- II. The following criteria (2) for release from detention before completion of therapy should be considered where appropriate:
 - A. The patient has demonstrated sufficient progress to make it reasonable to conclude that completion of therapy and cure can be achieved outside detention. This may involve providing differing levels of security for various patients.
 - B. The patient demonstrates a willingness to continue TB treatment.
 - C. The patient demonstrates an understanding of the nature of TB and the importance of completion of treatment and is willing to adhere to a DOT program.
 - D. Progress has been made in treating the concomitant conditions (i.e., mental illness, substance abuse, homelessness) which made adherence to TB treatment difficult.
 - E. A plan for the outpatient treatment of these concomitant problems has been developed as part of the plan for the completion of therapy.
 - F. Reasonable evidence exists that public health workers will be able to locate the patient in the community when necessary.
 - G. The patient understands that he or she will be detained again if he or she is not adherent to the treatment plan.

Written Agreements

- I. If regional detention sites are established for use by two or more health jurisdictions, the participating health jurisdictions should enter into written agreements which should be reviewed by the respective county/city counsels of each health jurisdiction and which include at least the following:
 - A. Procedures for detention and admission to the detention site. These procedures should:
 1. Be guided by the Guiding Principles above (see **Guiding Principles and Legal Requirements, I**)
 2. Include the Comprehensive Patient Assessments described above (see **Comprehensive Patient Assessments**)
 3. Be consistent with the CDHS/CTCA, “Guidelines for the Placement or Return of Tuberculosis Patients into High Risk Housing, Work, Correctional or In-Patient Settings,” (4/11/97) (3)

- B. Agreement as to when patients will be considered infectious and noninfectious
- C. The services, which will be provided at the detention, site - every effort should be made to include all the services described above (see **Detention Facility Services, I**)
- D. Charges which will be made for those services
- E. Invoicing procedures
- F. Methods and timing of payment
- G. Criteria and procedures for discharge including who has the authority to approve the discharge
- H. Rights of the patients
- I. Responsibilities of the health jurisdiction seeking detention
- J. Responsibilities of the health jurisdiction in which the site is located
- K. Procedures for obtaining proper judicial review of detention at intervals set by law
- L. Procedures and responsibilities for transporting patients:
 - 1. To and from the detention site
 - 2. To and from court when needed
 - 3. To and from medical care if needed

Note: Each local health jurisdiction and each regional detention site may have differing requirements necessitating the issuance of service orders and/or letters of intent in addition to the formal written agreements described above.

- II. The local health officer ordering detention should retain primary responsibility for the management of the tuberculosis patient being detained in a facility located outside the health officer's jurisdiction. The TB Controller or his/her designee should maintain constant contact with the provider of treatment to:
 - A. Monitor the patient's progress
 - B. Gather information for the judicial review process
 - C. Determine the earliest time for the appropriate release of the patient from detention
 - D. Oversee discharge planning
 - E. Gather information on the disposition of the case and complete follow-up Reports of a Verified Case of Tuberculosis (RVCT)
 - F. Minimize the workload of and expense to the jurisdiction in which the regional site is located

NOTE: No set of guidelines can cover all individual detention issues which can and will arise. Thus, when questions on individual situations not covered by these guidelines do arise, consult with the Local TB Control Program or the California Department of Health Services, TB Control Branch, for consultation and further information.

References:

1. CDHS/CTCA. Guidelines for the Treatment of Tuberculosis and Tuberculosis Infection for California, 4/11/97.
2. Alpers, A., Oscherwitz, T., Lo, B. Detaining Nonadherent Tuberculosis Patients Until Cure: A 50-State Legal Survey. Unpublished draft.
3. CDHS/CTCA. Guidelines for the Placement or Return of Tuberculosis Patients into High Risk Housing, Work, Correctional or In-Patient Settings, 4/11/97.