



CDPH/CTCA Joint Guidelines

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

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Preface

The following Guidelines have been developed by the California Department of Public Health (CDPH), Center for Infectious Diseases, Tuberculosis Control Branch (TBCB), and the California TB Controllers Association (CTCA). These Guidelines provide statewide recommendations for tuberculosis (TB) control in California. If these Guidelines are altered for local use, then the logo should be removed and adaptation from this source document acknowledged.

No set of guidelines can cover all individual situations that can and will arise. When questions arise on individual situations not covered by these guidelines, consult with your local TB Controller or the CDPH, TBCB. As mandated by state law (Health and Safety Code, Section 121361), all decisions regarding the discharge or transfer of TB patients from health care facilities (HCFs) must be made by the local health officer (LHO) or designee of the jurisdiction in which the facility is located.

Background

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 only be used when less costly interventions have been unsuccessful. While all local health jurisdictions should make certain less restrictive alternatives (e.g., incentives, enablers, directly observed therapy) are 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.

- 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.
- 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

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.

- Public health officials should make every reasonable attempt to assure that TB patients complete a prescribed course of therapy.
- The decision to detain should be based on a comprehensive and individualized assessment of the patient, including:
 - His or her medical condition
 - Course treatment
 - Risk of transmission if therapy is not completed
 - Barriers which prevent him or her from completing therapy
- The conditions of civil detention should be as therapeutic as possible.
- Detention sites, whether they be regional or local, should address the following needs of the patient:
 - Physical
 - Emotional
 - Social
 - Medical

In addition to the principles stated above, the following laws should guide detention.

- Health and Safety Code (H&SC) Section 121367 requires that orders for detention include:
 - 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**
 - The less restrictive alternatives which were considered and rejected, and

the reasons the alternatives were rejected.

- H&SC Section 121366 requires that:
 - If a detained person has requested release, “the local health officer shall make an application for court order authorizing continued detention within 72 hours after the request.”
 - If a detained person requests to be released, detention shall not continue for more than five business days in the absence of a court order authorizing detention.
 - “In no event, shall any person be detained for more than 60 days without a court order authorizing detention.”
 - “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.”
- 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:

1. The patient’s understanding (or lack thereof) of TB and why adherence to therapy is important.
2. History of non-adherence to treatment
3. Attitudes toward adherence to treatment
4. Mental health and psycho-social history, cognitive status
5. Medical history, including:
 - The risk to the patient and the community if treatment is not completed as recommended in the CDPH/CTCA, “Guidelines for the Treatment of Active Tuberculosis in California” (2003); and
 - The concomitant conditions which may influence response and adherence to treatment.
6. Drug or alcohol dependence
7. Living conditions (e.g., number of members in the household, availability of food, etc.)
8. Homelessness or lack of stable housing

9. Social-cultural considerations (ethnicity, customs, etc.)
10. Language

Detention Facility Services

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:

1. Directly Observed Therapy (DOT)
2. Case Management
3. Discharge planning in cooperation with health officials in the jurisdiction to which the patient will be released
4. Twenty-four hour security
5. Recreation facilities
6. Mental health counseling
7. Substance abuse counseling
8. Access to spiritual counseling
9. Reasonable accommodation of the patient's social-cultural needs
10. Visiting privileges
11. Reasonable accommodation of persons with disabilities
12. Services in the patient's native language

In addition, the detention facility should

13. Be properly licensed to provide these services
14. Have the ability to bill third parties (if appropriate)

Criteria for Early Release

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.

The following criteria (2) for release from detention before completion of therapy should be considered where appropriate:

CDPH/CTCA Guidelines for the Civil Detention of Persistently Non-Adherent Tuberculosis Patients in California, last updated in 2011. Some information may not be current. Consult with your local TB Control Program. Find them on CTCA.org in your Directory of TB Control Programs.

1. 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.
2. The patient demonstrates a willingness to continue TB treatment.
3. 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.
4. Progress has been made in treating the concomitant conditions (i.e., mental illness, substance abuse, homelessness) which made adherence to TB treatment difficult.
5. A plan for the outpatient treatment of these concomitant problems has been developed as part of the plan for the completion of therapy.
6. Reasonable evidence exists that public health workers will be able to locate the patient in the community when necessary.
7. The patient understands that he or she will be detained again if he or she is not adherent to the treatment plan.

Written Agreements

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 councils of each jurisdiction and which include at least the following:

1. Procedures for detention and admission to the detention site. These procedures should:
 - Be guided by the Guiding Principles above (see **Guiding Principles and Legal Requirements, A**)
 - Include the Comprehensive Patient Assessments described above (see **Comprehensive Patient Assessments, A**)
 - Be consistent with the CDPH-CTCA, “Guidelines for the Assessment of Tuberculosis Patients Infectiousness and Placement into High and Lower Risk Settings (2009) (2)
2. Agreement as to when patients will be considered infectious and non-infectious
3. 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)

4. Charges which will be made for those services
5. Invoicing procedures
6. Methods and timing of payment
7. Criteria and procedures for discharge, including who has the authority to approve the discharge
8. Rights of the patients
9. Responsibilities of the health jurisdiction seeking detention
10. Responsibilities of the health jurisdiction in which the site is located
11. Procedures for obtaining proper judicial review of detention at intervals set by law
12. Procedures and responsibilities for transporting patients:
 - To and from the detention site
 - To and from court when needed
 - 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.

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 frequent contact with the provider of treatment to:

- Monitor the patient's progress
- Gather information for the judicial review process
- Determine the earliest time for the appropriate release of the patient from detention
- Oversee discharge planning
- Gather information on the disposition of the case and complete follow-up Reports of a Verified Case of Tuberculosis (RVCT)
- Minimize the workload of and expense to the jurisdiction in which the regional site is located

References

1. CDPH-CTCA Guidelines for the Treatment of Active Tuberculosis (2003)
2. CDPH/CTCA Guidelines for the Assessment of Tuberculosis Patient Infectiousness and Placement into High and Lower Risk Settings (2009)
3. Public Health Institute – TB and the Law Project California Tuberculosis Control Law 2003