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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/01/09  
 SPONSOR HFL LAST UPDATED 3/4/09 HB 397 & 173/HFL  
 SHORT TITLE Isolation of Persons with Tuberculosis SB \_\_\_\_\_  
 ANALYST Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$0.1 indeterminate	\$0.1 indeterminate		Recurring	Various

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

House Bill 397 enacts a new section of the Public Health Act that provides for court-ordered treatment or isolation for persons at risk of tuberculosis (TB) transmission, relapse or development of drug-resistance, until completion of therapy.

HB 397ss provides for the following:

- requires notification to DOH by a physician or other person that a person has an infectious form of TB;
- upon receipt of notification, DOH is required to prescribe a treatment plan and include a notice to the person that failure to comply will result in court action;
- if DOH has knowledge that a person has failed to comply with the treatment plan, DOH shall petition the court for an order of protection for that person to comply;
- sets out requirements for the petition for an order of protection that states the person has or will likely have an infectious form of TB based on medical evidence, has failed to comply with the treatment plan, and poses a substantial likelihood of transmission;
- upon the filing of a petition for an order of protection, the court shall determine probable cause and if yes, grant ex parte a temporary order of protection for DOH to administer a program of “directly observed therapy” (DOT), isolate and administer a program of DOT, or isolate if the person refuses;
- cause the temporary order of protection and notice of hearing, terms and rights to be served on the person, including the rights to representation and re-petition for termination of an order of protection;

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- within 5 days after the granting of the temporary order of protection, hold an evidentiary hearing to determine if the court shall continue the order of protection;
- provides that a person held pursuant to a temporary order of protection shall be entitled to or provided representation by counsel at all hearings for the duration of isolation or DOT, and permitted to communicate on any matter by telephone or other means that do not expose others;
- at the evidentiary hearing, the court shall review the circumstances and determine if the order of protection shall continue until completion of therapy;
- the court must review its order of protection every ninety days;
- the order of protection shall be terminated and the person released if the petitioner has not met its burden of proof or exceptional circumstances exist;
- states that the provision does not permit the forcible administration of medicines;
- provides that the proceedings be closed and the records sealed from the public;
- provides immunity from civil liability for a person who in good faith reports that a person has an infectious form of TB;
- allows the person reported as having TB to sue for damages sustained as a result of negligent or intentional reporting or disclosure of information to an unauthorized person; and
- defines terms including “isolation”, to mean at home, in a health facility or prison.

## **FISCAL IMPLICATIONS**

Any fiscal impact will need to be balanced against the state’s interest in protecting public health. DOH reports that the estimated cost of providing a 9 month course of TB treatment (for a typical case of TB) at a secure residential treatment center is \$166 thousand. The estimated cost of providing a 24 month course of TB treatment (for multi-drug resistant TB) is \$443 thousand. DOH expects to reduce the high cost of treatment at secure residential treatment facilities by assuring medication compliance with outpatient “directly observed therapy”.

Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law, petitions for orders of protection and associated hearings.

## **SIGNIFICANT ISSUES**

HB 397ss combines two House bills that seek to increase the legal authority of DOH to enforce compliance with TB treatment and isolation: HB 173 and HB 397. DOH reports that HB 397ss includes language that more clearly defines the due process for court ordered treatment and isolation of persons who fail to adhere to a curative course of TB treatment than did previous forms of legislation. This language resulted from discussions between the bill sponsor, DOH and the New Mexico Chapter of the American Civil Liberties Union.

People with active TB in New Mexico receive each dose of TB medications from a public health nurse until a curative course of treatment is completed. This strategy for treating TB is called “directly observed therapy”. There is currently no legal mechanism for the DOH to obtain a court order for “DOT” in New Mexico.

## **PERFORMANCE IMPLICATIONS**

DOH notes that existing law only allows DOH to obtain an order to detain a person with a threatening communicable disease. HB 397ss provides a legal mechanism for DOH to obtain a court order for DOT, the standard of care for TB treatment. Under current law, an order of detention for a person with a threatening communicable disease terminates if the person poses no further risk of infecting others. However, if the full course of treatment for TB is not completed, the person may relapse or develop a drug-resistant form of TB and pose a risk of infecting others.

State laws providing for the isolation of persons with communicable diseases are subject to challenge under the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution. The American's With Disabilities Act of 1990, 42 U.S.C. 12101 might also be applicable.

42 U.S.C. 264 contains the federal law relating to quarantine and control of communicable infectious disease.

## **ADMINISTRATIVE IMPLICATIONS**

The DOH Tuberculosis and Refugee Health Program and Infectious Disease Bureau Medical Director would be responsible for identifying patients who are not compliant with their course of medical treatment or at risk of relapse. They would prepare recommendations for DOH to seek a court order for either DOT and/or isolation, using the least restrictive option of DOT first.

The Institute of Medicine, in its report "Ending Neglect: The Elimination of Tuberculosis in the United States", states "To permanently interrupt the transmission of TB and to prevent the emergence of multi-drug-resistant TB, all states (should) have health regulations that mandate completion of therapy (treatment to cure) for all patients with active TB."

## **TECHNICAL ISSUES**

The bill does not provide penalties for failure to notify DOH of an infected person, or failure for an infected person to comply with an order or protection.

## **OTHER SUBSTANTIVE ISSUES**

Health agencies have reported that in 2005, New Mexico was ranked 37<sup>th</sup> in the nation for TB cases with a rate of 2 per 100 thousand people, or 39 cases. Since then, the emergence of drug-resistant forms of TB has been of particular concern. In 2007, DOH reported an increased rate of 2.54 per 100 thousand people, or 51 reported cases. Forty-seven percent of the cases were among foreign-born individuals. Seventy nine percent of these individuals were from Mexico and 13 percent from Asia. Twelve percent of these individuals had a form of TB with resistance to at least one TB medication.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

There will not be mandatory or court ordered treatment for individuals with infectious TB. NMSA Section 24-1-15 will continue to address the control of infectious diseases, including TB.

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**QUESTIONS**

How many people each year with a communicable disease are “detained” by DOH under existing state law?

AHO/svb:mt