

## **Chapter 392**

**392.501**        **Short title**—This chapter may be cited as the “Tuberculosis Control Act.”

**392.51**        **Tuberculosis control**—A statewide system is established to control tuberculosis infection and mitigate its effects. The system consists of mandatory contact identification, treatment to cure, hospitalization, isolation for contagious cases, and voluntary, community-oriented care and surveillance in all other cases. Tuberculosis control services shall be provided by the coordinated efforts of the respective county health departments and contracted or other private health care providers.

**392.52**        **Definitions**—As used in this chapter, the term:

(1) “Active tuberculosis” means tuberculosis disease that is demonstrated to be contagious by clinical or bacteriological evidence, or by other means as determined by rule of the department. Tuberculosis disease is considered active until cured.

(2) “County health department” means an agency or entity designated as such in chapter 154.

(3) “Cure” or “treatment to cure” means the completion of a course of antituberculosis treatment.

(4) “Department” means the Department of Health.

(5) “Directly observed therapy” means treatment in which a patient ingests medications under the observation of a health care provider or other responsible party.

(6) “Threat to the public health” means a rebuttable presumption that a person has active tuberculosis and:

(a) Is not taking medications as prescribed;

- (b) Is not following the recommendations of the treating physician;
- (c) Is not seeking treatment for signs and symptoms compatible with tuberculosis; or
- (d) Evidences a disregard for the health of the public.

(7) “Tuberculosis” means a disease caused by *Mycobacterium tuberculosis*, *Mycobacterium bovis*, or *Mycobacterium africanum*.

**392.53 Reporting required—**

(1) Each person who makes a diagnosis of tuberculosis or who treats a person with tuberculosis and each laboratory that performs a test on a specimen that reveals the presence of the tubercule bacilli shall report or cause to be reported such facts to the department in addition to other facts that the department requires by rule to be reported, within a time specified by rule of the department, which period must not exceed 72 hours after the presence of tuberculosis is discovered.

(2) The department shall adopt rules specifying the information that must be included in a report of tuberculosis, the time within which the report must be filed, and where the report must be filed. The department shall consider the need for information, protection of the privacy and confidentiality of the patient, and the practical ability of persons and laboratories to report in a reasonable fashion. Rules adopted by the department may provide for telephonic, electronic, and written reporting and may establish different time periods and content for each method of reporting.

(3) A person who reports to the department the name of a person who has tuberculosis is not liable for damages caused by such report, unless the report is made with knowledge that it is false or with reckless disregard of the truthfulness of the report.

(4) A person who violates this section or the rules adopted under this section may be fined by the department, in the manner prescribed in s. 392.67. The department shall report each violation of this section to the regulatory agency that is responsible for licensing the person or laboratory that commits the violation.

**392.54 Contact investigation—**

(1) The department and its authorized agents may counsel and interview, or cause to be counseled and interviewed, any person who has active tuberculosis, who is reasonably suspected of having active tuberculosis, or who is reasonably suspected of having been exposed to active tuberculosis, in order to investigate the source and spread of the disease and in order to require such person to submit to examination and treatment to cure as necessary.

(2) All information gathered in the course of contact investigation is confidential, subject to the provisions of s. 392.65. Such information is exempt from s. 119.07(1).

**392.545 Naming of persons subject to proceedings—**

(1) When requesting an order from a circuit court under the provisions of s. 392.55, s. 392.56, or s. 392.57, the department shall substitute a pseudonym for the true name of the person to whom the order pertains. The actual name of the person shall be revealed to the court only in camera, and the court shall seal such name from further revelation.

(2) All court decisions, orders, petitions, and other formal documents shall be styled in a manner to protect the name of the person from public disclosure.

(3) The department, its authorized representatives, the court, and other parties to the lawsuit shall not reveal the name of any person subject to these proceedings except as permitted in s. 392.65. Such information is exempt from s. 119.07(1).

**392.55 Physical examination and treatment—**

(1) Subject to the provisions of subsections (3) and (4), the department and its authorized representatives may petition the circuit court to examine or cause to be examined, or treat to cure or cause to be treated to cure, any person who has, or is reasonably suspected of having or having been exposed to, active tuberculosis.

(2) Subject to the provisions of subsections (3) and (4), a person who has active tuberculosis or is reasonably suspected of having or having been exposed to active tuberculosis shall report for complete examination or treatment to cure, as appropriate, on an outpatient basis to a physician licensed under chapter 458 or chapter 459, or shall submit to examination or treatment to cure, as appropriate, at a county health department or other public facility. When a person has been diagnosed as having active tuberculosis, he or she shall continue with the prescribed treatment on an outpatient basis, which includes the use of directly observed therapy, until such time as the disease is determined to be cured.

(3) A person may not be apprehended or examined on an outpatient basis for active tuberculosis without consent, except upon the presentation of a warrant duly authorized by a circuit court. In requesting the issuance of such a warrant, the department must show by a preponderance of evidence that a threat to the public health would exist unless such a warrant is issued and must show that all other reasonable means of

obtaining compliance have been exhausted and that no other less restrictive alternative is available.

(4) A warrant requiring a person to be apprehended or examined on an outpatient basis may not be issued unless:

(a) A hearing has been held with respect to which the person has received at least 72 hours' prior written notification and has received a list of the proposed actions to be taken and the reasons for each such action. However, with the consent of the person or the person's counsel, a hearing may be held within less than 72 hours.

(b) The person has the right to attend the hearing, to cross-examine witnesses, and to present evidence. After review and consultation by the court, counsel for the person may waive the client's presence or allow the client to appear by television monitor where available.

(c) The court advises the person of the right to have legal counsel present. If the person is insolvent and unable to employ counsel, the court shall appoint legal counsel for the person pursuant to the indigence criteria in s. 27.52.

(5) The circuit court, legal counsel, and local law enforcement officials, as appropriate, shall consult with the department concerning any necessary infection control procedures to be taken during any court hearing or detention.

**392.56 Hospitalization, placement, and residential isolation—**

(1) Subject to the provisions of subsections (2) and (3), the department may petition the circuit court to order a person who has active tuberculosis to be hospitalized, placed in another health care facility or residential facility, or isolated from the general

public in the home as a result of the probable spread of tuberculosis, until such time as the risk of infection to the general public can be eliminated or reduced in such a manner that a threat to the public health no longer exists.

(2) A person may not be ordered to be hospitalized, placed in another health care facility or residential facility, or isolated from the general public in the home, except upon the order of a circuit court and upon proof:

(a) By the department, by clear and convincing evidence, that a threat to the public health is posed by the person who has active tuberculosis;

(b) That the person who has active tuberculosis has been counseled about the disease, the threat to the public health posed by tuberculosis, and methods to minimize the risk to the public, and, despite such counseling, indicates an intent by words or action to expose the public to active tuberculosis; and

(c) That all other reasonable means of achieving compliance with treatment have been exhausted and no less restrictive alternative exists.

(3) A person may not be ordered by a circuit court to be hospitalized, placed in another health care facility or residential facility, or isolated from the general public in the home, unless:

(a) A hearing has been held, with respect to which the person has received at least 72 hours' prior written notification and has received a list of the proposed actions to be taken and the reasons for each such action. However, with the consent of the person or the person's counsel, a hearing may be held within less than 72 hours;

(b) The person has the right to attend the hearing, to cross-examine witnesses, and present evidence. After review and consultation by the court, counsel for the person may waive the client's presence or allow the client to appear by television monitor where available; and

(c) The court advises the person of the right to have counsel present. If the person is insolvent and unable to employ counsel, the court shall appoint legal counsel for the person pursuant to the indigence criteria in s. 27.52.

(4) An order requiring the hospitalization, placement in a health care facility or residential facility, or isolation from public in the home must expire no later than 180 days after the date of the order or when the physician charged with the care of the person determines that the person no longer poses a threat to the public health, if the determination is made before the end of the 180-day period. Orders for hospitalization of a person or placement in a facility or isolation in the home may not be renewed unless the person is afforded all rights conferred in subsections (2) and (3). A hearing must be held within 14 days before the expiration of the 180-day period to determine the necessity for the person's continued hospitalization or necessary care and treatment to cure after release. The person's records from the inception of the disease are admissible evidence in the hearing.

(5) If the department petitions the circuit court to order that a person who has active tuberculosis be hospitalized in a facility operated under s. 392.62(2), the department shall notify the facility of the potential court order.

(6) The circuit court, legal counsel, and local law enforcement officials, as appropriate, shall consult with the department concerning any necessary infection control procedures to be taken during any court hearing or detention.

**392.565 Execution of certificate for involuntary hold**—When a person who has active tuberculosis or who is reasonably suspected of having active tuberculosis presents to a physician licensed under chapter 458 or chapter 459 for examination or treatment and the physician has reason to believe that if the person leaves the treatment location the person will pose a threat to the public health based on test results or the patient’s medical history and the physician has reason to believe that the person is not likely to appear at a hearing scheduled under s. 392.55 or s. 392.56, the treating physician shall request the State Health Officer or his or her designee to order that the person be involuntarily held by executing a certificate stating that the person appears to meet the criteria for involuntary examination or treatment and stating the observation upon which that conclusion is based. The sheriff of the county in which the certificate was issued shall take such person into custody and shall deliver the person to the nearest available licensed hospital, or to another location where isolation is available, as appropriate, for observation, examination, and treatment for a period not to exceed 72 hours, pending a hearing scheduled under s. 392.55 or s. 392.56. The certificate must be filed with the circuit court in which the person is involuntarily held and constitutes a petition for a hearing under s. 392.55 or s. 392.56.

**392.57 Emergency hold**—

(1) The department may file a petition before a circuit court requesting that an emergency hold order be issued for a person if the department has evidence that:



- (a) The person has or is reasonably suspected of having active tuberculosis;
  - (b) The person poses a threat to the public health;
  - (c) The person who has active tuberculosis is not likely to appear at a hearing scheduled under s. 392.55 or s. 392.56;
  - (d) The person provides evidence by words or action of being likely to leave the jurisdiction of the court prior to the hearing date; or
  - (e) The person is likely to continue to expose the public to the risk of active tuberculosis until the hearing date.
- (2) An emergency hold order may not be issued unless the court finds that:
- (a) The department has requested a hearing under s. 392.55 or s. 392.56 to consider the examination, treatment to cure, or placement of the person who has or who is reasonably suspected of having active tuberculosis;
  - (b) The department presents competent evidence that a threat to the public health exists unless the emergency hold order is issued;
  - (c) The department has no other reasonable alternative means of reducing the threat to the public health; and
  - (d) The department is likely to prevail on the merits in a hearing under s. 392.55 or s. 392.56.
- (3) When issuing an order for an emergency hold, the court shall direct the sheriff to immediately confine the person who has active tuberculosis. The sheriff shall confine and isolate the person in such a manner as required by the court. The sheriff and

the circuit court shall consult with the department concerning any necessary infection control procedures to be taken.

(4) In order to reduce the time before a full hearing may be held, the person confined under an emergency hold order, or the person's counsel, may waive the notice periods for hearings required under s. 392.55 or s. 392.56. An emergency hold order may not continue for more than 5 days or the time period necessary for conducting hearings under s. 392.55 or s. 392.56, whichever time period is shorter.

**392.58 Service of notice and processes; duties of sheriff—**

(1) All notices required to be given, warrants, petitions, processes issued, and orders entered pursuant to s. 392.55, s. 392.56, or s. 392.57 shall be served by the sheriff of the county in which the person alleged to be infected with tuberculosis resides or is found.

(2) The judge, in his or her order for hospitalization or placement in another health care or residential facility under s. 392.56, shall direct the sheriff of the county in which such person resides or is found to take the person into his or her custody and immediately deliver him or her to the director of the facility named in the order.

**392.59 Forms to be developed—**The department shall develop and furnish to the court all forms necessary under ss. 392.55, 392.56, 392.565, and 392.57, and the court may use such forms where appropriate.

**392.60 Right of appeal; immediate release—**

(1) Any person who is aggrieved by the entry of an order under s. 392.55, s. 392.56, or s. 392.57 shall have the period of time provided by the Florida Rules of Appellate Procedure within which to appeal an order from the circuit court. Every order

entered under the terms of s. 392.55, s. 392.56, or s. 392.57 shall be executed immediately unless the court entering such order or the appellate court, in its discretion, enters a supersedeas order and fixes the terms and conditions thereof.

(2) Any person who is examined, treated, hospitalized, placed in another health care facility or residential facility, isolated in the home, or confined under an emergency hold order, as a result of an order entered under s. 392.55, s. 392.56, or s. 392.57, may at any time petition the circuit court for immediate release and termination of the order.

(3) The petition to the court for immediate release and termination of the order entered under authority of s. 392.55, s. 392.56, or s. 392.57 shall show that the person is entitled to relief from the original order pursuant to the Florida Rules of Civil Procedure, or that:

(a) There has been a substantial change in the original facts and circumstances upon which the order was issued;

(b) The person is cured and no longer poses a threat to the public health;  
or

(c) The person will continue with prescribed medications and treatment to cure, which includes the use of directly observed therapy, if medically necessary, to reduce the risk of infection to the public and the person has not exhibited past behavior that indicates a tendency toward noncompliance with treatment.

(4) When considering a petition for immediate release and before making any release, the court shall consult the department and the person's physician, if any, concerning the person's medical condition and any other related factors that may affect

the present and future threat to the public health that may be caused by the release of the person.

(5) Upon granting a petition for immediate release, the court may impose those conditions it believes reasonably necessary to protect the public from active tuberculosis.

**392.61 Community tuberculosis control programs—**

(1) The department shall operate, directly or by contract, community tuberculosis control programs in each county in the state.

(2) Community tuberculosis control programs shall have the following functions:

(a) Promotion of community and professional education about the causes and dangers of tuberculosis and methods of its control and treatment to cure;

(b) Community and individual screening for the presence of tuberculosis;

(c) Surveillance of all suspected and reported cases of active tuberculosis, including contact investigation as necessary and as directed by the department;

(d) Reporting of all known cases of tuberculosis to the department;

(e) Development of an individualized treatment plan for each person who has active tuberculosis and who is under the care of the department, including provision of treatment to cure and followup, and the distribution of medication by means of directly observed therapy, if appropriate, to eligible persons under rules and guidelines developed by the department; and

(f) Provision of counseling, periodic retesting, and referral to appropriate social service, employment, medical, and housing agencies, as necessary for persons released from hospitalization or residential placement.

(3) This section does not prevent the department from operating regionally based tuberculosis control programs, if services are offered in each county.

**392.62 Hospitalization and placement programs—**

(1) The department shall contract for operation of a program for the treatment of persons who have active tuberculosis in hospitals licensed under chapter 395 and may provide for appropriate placement of persons who have active tuberculosis in other health care facilities or residential facilities. The department shall require the contractor to use existing licensed community hospitals and other facilities for the care and treatment to cure of persons who have active tuberculosis or a history of noncompliance with prescribed drug regimens and require inpatient or other residential services.

(2) The program for control of tuberculosis shall provide funding for participating facilities and require any such facilities to meet the following conditions:

(a) Admit patients voluntarily and under court order as appropriate for each particular facility;

(b) Require that each patient pay the actual cost of care provided whether the patient is admitted voluntarily or by court order;

(c) Provide for the care of patients in the program regardless of ability to pay;

(d) Require a primary clinical diagnosis of active tuberculosis by a physician licensed under chapter 458 or chapter 459 before admitting the patient; provided that there may be more than one primary diagnosis;

(e) Provide a method of notification to the county health department and to the patient's family, if any, before discharging the patient from the hospital or other facility;

(f) Provide for the necessary exchange of medical information to assure adequate community treatment to cure and followup of discharged patients, as appropriate; and

(g) Provide for a method of medical care and counseling and for housing, social service, and employment referrals, if appropriate, for all patients discharged from the hospital.

(3) A hospital may, pursuant to court order, place a patient in temporary isolation for a period of no more than 72 continuous hours. The department shall obtain a court order in the same manner as prescribed in s. 392.57. Nothing in this subsection precludes a hospital from isolating an infectious patient for medical reasons.

(4) Any person committed under s. 392.57 who leaves the tuberculosis hospital or residential facility without having been discharged by the designated medical authority, except as provided in s. 392.63, shall be apprehended by the sheriff of the county in which the person is found and immediately delivered to the facility from which he or she left.

**392.63 Temporary leave**—Any person who has been hospitalized, placed in another health care facility or residential facility, or isolated in the home may be

granted a short-term temporary leave at the discretion of the department or its authorized representatives, if the department determines the temporary leave will be closely monitored and will not pose a threat to the public health. Temporary leave may be granted for therapeutic purposes, in the event of death or critical illness in the person's family, or for other emergencies.

**392.64 Adherence to treatment; treatment plan; penalties—**

(1) The department, its authorized representatives, or a physician licensed under chapter 458 or chapter 459 shall prescribe an individualized treatment plan for each person who has active tuberculosis. The goal of the treatment plan is to achieve treatment to cure by the least restrictive means. The department shall develop, by rule, a standard treatment plan form that must include, but is not limited to, a statement of available services for treatment, which includes the use of directly observed therapy; all findings in the evaluation and diagnostic process; measurable objectives for treatment progress; and time periods for achieving each objective. Each treatment plan must be implemented through a case management approach designed to advance the individual needs of the person who has active tuberculosis. The person's progress in achieving the objectives of the treatment plan must be periodically reviewed and revised as necessary, in consultation with the person.

(2) The department may petition a circuit court under s. 392.55, s. 392.56, or s. 392.57, as it deems appropriate, to require adherence to treatment plans prescribed under subsection (1).

(3) Any person who has active tuberculosis and who fails to comply with a treatment plan or any other requirement that is imposed by the court under s. 392.55, s.

392.56, or s. 392.57, or any minor's parent, guardian, or custodian who fails to comply with a treatment plan or any other requirement of the court, or any person who aids or abets in the failure to comply with treatment plans and other requirements of the court may be punished by contempt proceedings in addition to other penalties that may be imposed under s. 392.67.

(4) Contempt proceedings may be initiated by the department or its authorized representatives.

**392.65 Confidentiality—**

(1) All information and records held by the department or its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis shall be strictly confidential and exempt from s. 119.07(1). Such information shall not be released or made public by the department or its authorized representatives or by a court or parties to a lawsuit, except that release may be made under the following circumstances:

(a) When made with the consent of all persons to which the information applies;

(b) When made for statistical purposes, and medical or epidemiologic information is summarized so that no person can be identified and no names are revealed;

(c) When made to medical personnel, appropriate state agencies, or courts of appropriate jurisdiction to enforce the provisions of this chapter and related rules;



(d) When made in a medical emergency but only to the extent necessary to protect the health or life of a named person or group of persons; or

(e) When made to the proper authorities as required by chapter 39 or chapter 415.

(2) When disclosure is made pursuant to a subpoena, such information shall be sealed by the court from further disclosure, except as deemed necessary by the court to reach a decision in the proceeding, unless otherwise agreed to by all parties. Such information is exempt from s. 119.07(1).

(3) No employee of the department or its authorized representatives shall be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of a person examined or treated for tuberculosis by the department or its authorized representatives, or of the existence or contents of such reports received from a private physician or private health facility or laboratory, without the consent of the person examined or treated for tuberculosis, except in proceedings under s. 392.55, s. 392.56, or s. 392.57.

**392.655 Prisoners—**

(1) The department and its authorized representatives may, at its discretion, enter any state, county, or municipal detention facility to interview, examine, and treat any prisoner for tuberculosis. Any such state, county, or municipal detention facility shall cooperate with the department and its authorized representatives to provide such space as is necessary for the examination and treatment of all prisoners having or suspected of having tuberculosis.

(2) Nothing in this section shall be construed as relieving the Department of Corrections, counties, or municipalities of their primary responsibility for providing medical treatment for prisoners, including treatment for tuberculosis.

**392.66 Rules**—The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this chapter. The rules must include requirements for tuberculosis treatment and provide consequences if a person who has active tuberculosis fails to comply with treatment requirements.

**392.67 Unlawful acts; penalties for violation—**

(1) It is unlawful for any person who has active tuberculosis and who knows or has been informed of that fact to willfully expose other persons to the disease.

(2) Any person who violates subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who maliciously disseminates any false information or report concerning the existence of tuberculosis commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) (a) In addition to any administrative action authorized by chapter 120 or by other law, a person who violates any provision of the department's rules pertaining to tuberculosis or the requirements for reporting tuberculosis under s. 392.53 may be punished by a fine not to exceed \$500 for each violation. Any penalties enforced under this subsection shall be in addition to other penalties provided by this chapter.

(b) In determining the amount of fine to be imposed, if any, for a violation, the department shall consider:

1. The gravity of the violation, including the probability that death or serious physical or emotional harm to any person will result or has resulted, the severity of the actual or potential harm, and the extent to which the applicable law or rule was violated.

2. Actions taken to correct the violation.

3. Any previous violation.

(c) All amounts collected under this subsection shall be deposited into an appropriate trust fund of the department.

**392.68 Fees and other compensation—**

(1) For the services required to be performed under ss. 392.55, 392.56, 392.57, and 392.62, compensation shall be paid as follows:

- (a) The sheriff shall receive the same fees and mileage as are prescribed for like services in criminal cases.

- (b) The counsel appointed by the court to represent an indigent person shall receive compensation as provided in s. 27.5304.

(2) All fees, mileage, and charges provided to the sheriff pursuant to paragraph (1)(a) shall be taxed by the court as costs in each proceeding and shall be paid by the board of county commissioners. All compensation provided to court-appointed counsel pursuant to paragraph (1)(b) shall be taxed by the court as costs and paid by the state.

**392.69 Appropriation, sinking, and maintenance trust funds; additional powers of the department—**

(1) The Legislature shall include in its annual appropriations act a sufficient sum for the purpose of carrying out the provisions of this chapter.

(2) All moneys required to be paid by the several counties and patients for the care and maintenance of patients hospitalized by the department for tuberculosis shall be paid to the department, and the department shall immediately transmit these moneys to the Chief Financial Officer, who shall deposit the moneys in the Operations and Maintenance Trust Fund, which shall contain all moneys appropriated by the Legislature or received from patients or other third parties and shall be expended for the operation and maintenance of the state-operated tuberculosis hospital.

(3) In the execution of its public health program functions, notwithstanding s. 216.292(2)(b)2., the department is hereby authorized to use any sums of money which it may heretofore have saved or which it may hereafter save from its regular operating appropriation, or use any sums of money acquired by gift or grant, or any sums of money it may acquire by the issuance of revenue certificates of the hospital to match or supplement any state or federal funds, or any moneys received by said department by gift or otherwise, for the construction or maintenance of additional facilities or improvement to existing facilities, as the department deems necessary.

(4) The department shall appoint an advisory board, which shall meet quarterly to review and make recommendations relating to patient care at A. G. Holley State Hospital. Members shall be appointed for terms of 3 years, with such appointments being staggered so that terms of no more than two members expire in any one year. Members shall serve without compensation, but they are entitled to be reimbursed for per diem and travel expenses under s. 112.061.

**Section 85:** The department of Health shall develop and implement a transition plan for the closure of A.G. Holley State Hospital. The plan shall include specific steps to end voluntary admissions; transfer patients to alternative facilities; communicate with families, providers, other affected parties, and the general public; enter into any necessary contracts with providers; and coordinate with the Department of Management Services regarding the disposition of equipment and supplies and the closure of the facility; and the Agency for Health Care Administration is directed to modify its reimbursement plans and seek federal approval, if necessary, to continue Medicaid funding throughout the treatment period in community hospitals and other facilities.