

Compilation of Codes, Rules and Regulations of the State of New York

Title 14. Department of Mental Hygiene

Chapter XIV. Office for People with Developmental Disabilities

Part 633. Protection of Individuals Receiving Services in Facilities and Services Operated and/or Certified by Opwdd (Refs & Annos)

14 NYCRR 633.14

Section 633.14. Procedures for the control of tuberculosis

Currentness

<Pursuant to Executive Order No. 210, Executive Orders 202 through 202.111 and Executive Orders 205 through 205.3, addressing the COVID-19 crisis, are hereby rescinded effective June 25, 2021.>

(a) **Applicability.** This section applies to developmental centers and facilities certified by OPWDD, including family care. It does not apply to service recipients of Clinic Treatment Facilities as defined in Part 679 of this Title.

(b) **Definitions.** The following definitions are applicable to this section only.

(1) AFB smears and cultures. Laboratory tests used to determine the presence or absence of an active *Mycobacterium* tuberculosis infection. They are used to help determine whether tuberculosis (TB) is confined to the lungs (pulmonary) or has spread to organs outside the lungs (extrapulmonary).

(2) Active pulmonary tuberculosis. A contagious disease of the lungs that is confirmed by culture to be caused by the microorganism *Mycobacterium* tuberculosis.

(3) Employee. Someone who has an employee-employer full, part-time or seasonal relationship with a service provider, and who receives monetary or other compensation in exchange for his/her performance of assigned duties.

(4) Contractor. A party subject to a contractual arrangement with OPWDD or a service provider, to perform a service in exchange for financial or other consideration and who will be reasonably anticipated to have direct contact with service recipients. This includes independent contractors and parties who are employed by contractors.

(5) Possible tuberculosis infection. Someone demonstrating a significant reaction to a TB test, but who has no signs or symptoms of active pulmonary tuberculosis and no tuberculosis organisms are found in the sputum.

(6) *Mycobacterium tuberculosis* (*M. tuberculosis*). The bacterium that causes most cases of tuberculosis.

(7) Purified Protein Derivative (PPD). A purified protein derivative of the tubercle bacilli, used in the tuberculin skin test (see Tuberculin Skin Test).

(8) Service provider. A developmental center or operator of a facility certified by OPWDD, other than Clinic Treatment Facilities described in Part 679 of this Title. In the case of a family care home, the sponsoring agency shall be responsible for complying with requirements applicable to the service provider.

(9) Service recipient. Any person receiving services from a developmental center or facility certified by OPWDD, except for those receiving services through a Clinic Treatment Facility described in Part 679 of this Title.

(10) Suspected active pulmonary tuberculosis. A condition in which a person either exhibits the clinical signs and symptoms of active pulmonary tuberculosis or has a significant reaction to the TB test and is awaiting the results of diagnostic testing.

(11) TB testing. Screening for tuberculosis infection utilizing a test currently approved by the United State Food and Drug Administration (FDA) and/or recommended by the Centers for Disease Control (CDC) for that purpose.

(12) Tuberculin Skin Test (TST). A test which involves the introduction of a purified protein derivative (PPD) of the tubercle bacilli, called tuberculin, into the skin by intradermal injection and which is read in millimeters of induration within 48-72 hours.

(13) Two-step PPD. A procedure performed to rule out the presence of an anamnestic response in people who were infected with tuberculosis in the distant past. An anamnestic phenomenon is one in which an initial negative TST triggers an immune response, resulting in a subsequent positive TST.

(14) Volunteer. A person who meets the definition of “volunteer” in section 633.99 of this Part who has regular direct contact with persons receiving services. This does not include participants in groups that only periodically are in contact with persons receiving services (e.g. groups who come in to sing holiday songs). The provisions applying to volunteers in this section also apply to students, interns and senior companions.

(c) Testing for TB.

(1) Initial testing.

(i) All employees, volunteers, contractors, family care providers and approved substitute/respite providers shall have TB testing completed prior to their first day of employment or service provision. If using the two-step PPD, individuals may begin work if the first TST is negative.

(ii) All service recipients shall either provide proof of TB testing within the last 12 months or be assessed for signs and symptoms of active pulmonary tuberculosis on or prior to their first day of receipt of service. TB testing must be carried out within seven days of the first day of receipt of service.

(iii) An employee, contractor, volunteer, family care provider, approved substitute/respite provider or service recipient may select testing by his/her health care provider. The results of the TB testing and any necessary follow-

up evaluation must be documented and shared with the service provider or sponsoring agency prior to or on the first day of employment or service provision or receipt of services.

(2) Annual testing - developmental centers only.

(i) TB testing shall be conducted on an annual basis for employees, volunteers, contractors, and service recipients who provide/receive services in a developmental center.

(ii) All service recipients, employees, volunteers, and contractors who provide/receive services in a developmental center shall receive annual TB testing within 12 months of their last documented test. An employee, contractor, volunteer or service recipient may select testing by his/her own health care provider. The results of the TB testing and any necessary follow-up evaluation must be documented and shared with the service provider.

(3) Exposure testing. Testing shall be conducted for all service recipients, employees, contractors, volunteers, family care providers and approved respite/substitute providers who are exposed to someone with a suspected or confirmed case of active pulmonary tuberculosis. Such exposure testing will be conducted in cooperation with the state and local health departments.

(d) Exclusions/contraindications for TB testing.

(1) In order for the service provider to permit a party's exclusion from either pre-employment/pre-receipt/pre-delivery of services or follow-up TST, the service provider shall have documentation of one of the following reasons for contraindication:

(i) prior documented significant reaction to TB testing; or

(ii) adequate treatment for active pulmonary tuberculosis; or

(iii) completion of adequate preventive therapy.

(2) A statement by a physician, nurse practitioner or physician's assistant of contraindication shall be acceptable as long as the statement includes:

(i) a recommendation as to when and if testing would be appropriate at a designated point in the future; and

(ii) how the party will be evaluated for active pulmonary tuberculosis in the interim.

(3) Evaluation of parties excluded from TB testing. A registered nurse shall conduct a general evaluation of the party taking into account any present symptomatology and history since the party's previous TB test or evaluation. Based on such evaluation the nurse may refer the party to a physician, nurse practitioner or physician's assistant for a formal diagnostic evaluation to exclude active pulmonary tuberculosis. Routine chest x-ray examinations are not required.

(4) Prior vaccination with Bacillus of Calmette and Guerin (BCG) is not a contraindication for TB testing. Results are interpreted in the same manner as for someone who has not been immunized.

(5) Evaluation of a party excluded from TST testing who has been exposed to someone with a suspected or confirmed case of active pulmonary tuberculosis. Such party shall be referred to the local health department for appropriate post-exposure evaluation.

(e) Performance and interpretation of TB testing.

(1) TB testing shall be performed in accordance with generally accepted community practice in the fields of medicine and nursing.

(2) If an initial TST is performed, it shall be conducted employing a two-step PPD unless the person has documented evidence of a TST within the last 12 months.

(3) If a TST is performed, the reading of the TST shall be performed between 48 and 72 hours after implantation by one of the following: physician, physician's assistant, nurse practitioner, registered nurse, or licensed practical nurse. Interpretation of the TST may only be done by a physician, physician's assistant, nurse practitioner or registered nurse.

(4) TB test results shall be documented by the service provider. Documentation shall include the date tested, the testing method used, the results of the test and the interpretation of the test. If using the TST, documentation shall also include the testing material used, the site of implantation, the date of reading and the size of the reaction in induration (not erythema) in millimeters.

(f) **Evaluation of those with significant reaction.** Any party with a significant reaction and/or a test result interpreted to indicate possible tuberculosis infection shall be immediately referred to a health care provider knowledgeable in the diagnosis of tuberculosis for a formal diagnostic evaluation to exclude active pulmonary tuberculosis.

(1) The following requirements apply to employees, volunteers, contractors, family care providers and approved substitute/respite providers:

(i) If initial testing shows a significant reaction and/or a test result interpreted to indicate possible tuberculosis infection, the party shall not be allowed to begin employment/service provision until:

(a) the party is evaluated by a health care provider and found to be free of active pulmonary tuberculosis; or

(b) the party meets the following criteria:

- (1) adequate treatment is instituted; and
- (2) the cough is resolved; and
- (3) sputum specimens are negative on three consecutive AFB smears.

(ii) If annual testing and/or exposure testing shows a significant reaction and/or a test result interpreted to indicate possible tuberculosis infection, the party shall be assessed by a registered nurse, physician, physician's assistant or nurse practitioner for signs/symptoms of active pulmonary tuberculosis.

- (a) Employees, volunteers, and contractors without signs/symptoms of active pulmonary tuberculosis may continue to work but must be evaluated within five days. If the evaluation is not completed within five days, the party will not be allowed to work or provide services until such evaluation is complete and s/he has met the criteria specified in subparagraph (1)(i) of this subdivision.
- (b) Employees, volunteers, and contractors with signs/symptoms of active pulmonary tuberculosis shall be immediately excluded from working or providing services. Such party shall not be allowed to work or provide services until they have met the criteria specified in subparagraph (1)(i) of this subdivision.
- (c) Family care providers and/or approved substitute/respite providers without signs/symptoms of active pulmonary tuberculosis must be evaluated within five days. If the evaluation is not completed within five days, recipients of service shall be removed from the home (or the substitute/respite provider shall not be allowed to provide services elsewhere as appropriate) until such evaluation is complete and s/he has met the criteria specified in subparagraph (1)(i) of this subdivision.

(d) Family care providers and/or approved substitute/respite providers with signs/symptoms of active pulmonary tuberculosis. Recipients of service shall be immediately removed from the home, and shall not return to the home (or the substitute/respite provider shall not be allowed to provide services as appropriate) until the provider has met the criteria specified in subparagraph (1)(i) of this subdivision.

(2) The following requirements apply to service recipients. Any recipient of service who has a significant reaction and/or a test result interpreted to indicate possible tuberculosis infection shall be immediately assessed by a registered nurse, physician, physician's assistant or nurse practitioner for signs/symptoms of active pulmonary tuberculosis.

(i) Recipients of service without signs/symptoms of active pulmonary tuberculosis may continue with his/her normal activities including day program and must be evaluated within five days. If the evaluation is not completed within five days, the person shall be confined to his/her room, to the extent possible, until such evaluation is complete and s/he has met the criteria specified in subparagraph (1)(i) of this subdivision.

(ii) Recipients of service with signs/symptoms of active pulmonary tuberculosis are to be immediately transported to the nearest acute care facility (e.g. emergency room, urgent care center, etc.) for evaluation and treatment.

(3) The service provider shall have documentation by a physician or other health care provider that the criteria specified in subparagraph (1)(i) of this subdivision have been met before the service recipient is allowed to return to the developmental center, facility or family care home or to receive services from a respite/substitute provider, or the party is allowed to return to work or service provision.

(g) **Maintaining compliance.** TB testing or evaluation for active tuberculosis shall be mandatory.

(1) Refusal by an employee, volunteer or contractor to be tested or evaluated for active pulmonary tuberculosis shall be considered incompatible with initial or further employment or affiliation with the service provider or OPWDD.

(2) Refusal by a family care provider or approved substitute/respite provider to be tested or evaluated for active pulmonary tuberculosis shall be considered incompatible with the initial and/or continued certification of the family care home or the approval of the substitute/respite provider. (This provision does not apply to those family care providers or approved substitute/respite providers who are making a good faith effort to comply with testing requirements.)

(3) Refusal by a service recipient to be tested or evaluated for active pulmonary tuberculosis shall be considered incompatible with initial or further receipt of services from a service provider. (This provision does not include those service recipients who are making a good faith effort to comply with testing requirements.)

(h) Cooperation and coordination with public health authorities.

(1) Each suspected or confirmed case of active pulmonary tuberculosis shall be reported to the local health department and to OPWDD within 24 hours.

(2) The service provider and OPWDD will coordinate efforts related to contact investigation and testing and care of the affected party with the appropriate local health department and the New York State Department of Health.

(i) Tuberculosis control plan and register.

(1) Each service provider shall have a tuberculosis control plan which includes provisions for:

(i) training to be conducted initially upon employment and annually thereafter for employees, family care providers and approved respite/substitute providers on the signs and symptoms of active pulmonary tuberculosis, and information on agency-specific policies and procedures;

(ii) ensuring that employees, contractors, volunteers, family care providers, approved substitute/respite providers and service recipients are appropriately tested and evaluated for active pulmonary tuberculosis; and

(iii) maintaining documentation of testing.

(2) The service provider shall document all suspected or confirmed cases of active pulmonary tuberculosis, including maintenance of a register of:

(i) all known or suspected tuberculosis cases, including the results of tests, x-rays, and treatments carried out and reports of suspected or confirmed active pulmonary tuberculosis made to the local health department; and

(ii) the results of tuberculosis testing noting positive reactions and parties who have received or are receiving preventive therapy or treatment for active pulmonary tuberculosis.

(3) A summary of total TB test results shall be maintained at a location designated by each service provider for employees, volunteers, contractors, family care providers, approved substitute/respite providers, and service recipients.

Credits

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Current with amendments included in the New York State Register, Volume XLIV, Issue 9 dated March 2, 2022. Some sections may be more current, see credits for details.

N.Y. Comp. Codes R. & Regs. tit. 14, § 633.14, 14 NY ADC 633.14