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## PRACTICE GROUP: HEALTHCARE

SEPTEMBER 8, 2017

### ARE YOU PREPARED FOR A LEGIONNAIRES' OUTBREAK?

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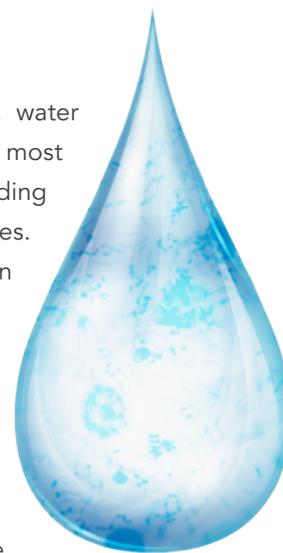
#### THE FREQUENCY

Legionnaires' disease is a condition that our healthcare organizations do not frequently encounter, yet the Centers for Disease Control (CDC) estimates that between 8,000 – 18,000 people a year are hospitalized with this disease, and more than 10 percent of the cases are fatal<sup>3</sup>. In their Vital Signs report issued on June 6, 2017, the CDC indicated that, while most cases of Legionnaires' disease are not associated with healthcare facilities, 1 in 4 people who contract the infection while in a healthcare organization will die. Other relevant report statistics indicated that 80 percent of the cases were associated with long term care facilities, 18 percent with hospitals, and two percent with both types of organizations.<sup>2</sup> Recent news highlighting the suspected transmission of the Legionella bacteria to patients in a local hospital has reminded healthcare leaders of the importance of having a comprehensive risk management program.

#### LEGIONELLA BACTERIA<sup>2</sup>

According to the CDC, individuals may develop Legionellosis when they inhale water droplets that are contaminated with *Legionella*. Outbreaks are often traced back to the growth of this bacterium in buildings

or structures that have complex water systems that are common in most healthcare organizations, including hospitals and long term care facilities. The most likely sources of infection include potable water used for showering, cooling towers, decorative fountains, and hot tubs. The most vulnerable individuals include the elderly, current or former smokers, the immunocompromised, and those with chronic or underlying illnesses, such as diabetes, or kidney/liver failure. The potential condition that may result from exposure to the bacteria is a pneumonia referred to as Legionnaires' disease, or a less serious infection called Pontiac fever.



#### RISK MANAGEMENT PREVENTION AND CONTROL

Risk management strategies should be directed not only to prevention of the disease through creating, monitoring, and maintaining a safe building water system, but also for contingency plans to respond to any outbreaks. In 2015, ASHRAE published specific

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guidelines for Legionella water management programs.<sup>7</sup> Generalized standards and surveyor guidance is included in a June 6, 2017 CMS Memorandum addressing *Legionella* infections for hospitals, critical access hospitals, and nursing homes<sup>4</sup>. Additionally, the CDC recently published a toolkit to aid organizations implementing industry standards<sup>8</sup>.

Organizations should designate and assign accountability to a multidisciplinary team for the organization's water management program. The team should also have the authority to develop and revise a written risk management plan to implement applicable standards, policies, and procedures in accordance with ASHRAE industry standards and the CDC. Key provisions include:



- Identify buildings at increased risk and the applicable standards
- Map each building's water system
- Assess specific areas where Legionella could grow and spread – e.g. clinical and clinical support areas and devices that could expose patients to contaminated water, like ice machines
- Determine where, what, and how appropriate control measures should be applied
- Create a plan to monitor control measures – e.g. water testing protocols
- Take appropriate action if bacteria counts are outside pre-established control limits
- Develop a plan to respond to suspected cases of Legionellosis or other illnesses related to waterborne pathogens, including reporting to State health authorities

In addition, be sure to contractually transfer liability risk for new construction or renovations affecting the integrity of an organization's water system to your contractors and subcontractors. It is also recommended that you be added to their environmental policy as an additional insured and confirm that coverage is in place.

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#### RISK, LIABILITY AND INSURANCE IMPLICATIONS

Harm caused by the Legionella bacteria may be difficult to prove, because the disease often affects individuals who have other chronic illnesses that compromise their immune systems. However, negligent maintenance of the facility's water supply may be alleged when Legionella bacteria is found in a facility's water supply.

In addition to bodily injury, there can be financial loss associated with property (water equipment and systems), emergency response, remediation, relocation of patients, business interruption, regulatory compliance (fines and penalties), contractual obligations, and negative publicity.

Your insurance broker can assist you to review your existing insurance policies and identify coverage that may respond to claims and costs resulting from a Legionnaires' outbreak. While most organizations often look to their directors and officers liability, professional and general liability, and property policies for coverage, a review may indicate exclusionary language for which no coverage is available. The insurance industry has



developed pollution legal liability policies to address environmental risks often excluded from traditional policies that can be customized to an organization's specific needs.

Adhering to requirements and implementing a water management program to reduce the growth and spread of Legionella will also provide support to minimize allegations of negligence should an outbreak occur.

## References and Resources

1. CDC; Patients in Health Care Facilities at Risk for Legionnaires' Disease; June 6, 2017; <https://www.cdc.gov/media/releases/2017/p0606-legionnaire-disease-risk.html>
2. CDC; Legionella; [www.cdc.gov/legionella/index.html](http://www.cdc.gov/legionella/index.html)
3. CDC; CDC Discoveries: Legionnaires' Disease; June 2, 2016; <https://www.cdc.gov/about/facts/cdcdiscovery/legionnaires.html>
4. Center for Medicare and Medicaid Services (CMS); Reference S&C 17-30-Hospitals/CAHs/NHs; Revised 06092017; <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-30.pdf>
5. HCPRO Hospital Safety Insider; How to Slash the Risk of Waterborne Illness; March 23, 2017; <http://www.hcpro.com/SAF-329111-874/How-to-slash-the-risk-of-waterborne-illnes.html>
6. New Day; Pollution Liability and Legionella; <http://newdayunderwriting.com/?s=pollution+liability+legionella>
7. ASHRAE (formally the American Society of Heating, Refrigerating and Air Conditioning Engineers) Standard 188 Legionellosis: Risk Management for Building Water Systems (must be purchased); <https://www.ashrae.org/resources--publications/bookstore/ansi-ashrae-standard-188-2015-legionellosis-risk-management-for-building-water-systems>
8. CDC; ToolKit - Developing a Water Management Program to Reduce Legionella Growth and Spread in Buildings A Practical Guide to Implementing Industry Standards; June 5, 2017; <https://www.cdc.gov/legionella/maintenance/wmp-toolkit.html>
9. CDC ASHRAE 188: Legionellosis: Risk Management for Building Water Systems Questions and Answers; <https://www.cdc.gov/legionella/health-depts/ashrae-faqs.html>
10. Health Facilities Management; Minimizing Facility Water System Risks ASHRAE Standard 188 Legionella Prevention Requirements for Hospitals; August 2, 2017; <http://www.hfmmagazine.com/articles/3033-minimizing-facility-water-system-risks>
11. Health Facilities Management; Understanding Requirements for Legionellosis Protection; May 4, 2016; <http://www.hfmmagazine.com/articles/2179-understanding-requirements-for-legionellosis-protection>