



McKnight's

Long-Term Care News & Assisted Living

Dave Bush

October 02, 2017

CMS requirement for Legionnaires' disease control in LTC

Share this content:

The new CMS directive titled, “Requirement to Reduce Legionella Risk in Healthcare Facility Water Systems to Prevent Cases and Outbreaks of Legionnaires' Disease” published in June finally addresses the heretofore lack of federal guidance for long-term care facilities regarding this very important and growing concern. Nineteen percent of all Legionnaires' disease (LD) outbreaks are LTC related.

Hopefully this directive will also address a recent spate of new state and county guidance documents with conflicting, confusing, and in some cases expensive and poor recommendations for Legionella control.

The absence of any federal directive has been problematic as healthcare providers were left on their own to identify the potential issues involved and sort through often conflicting possible approaches for addressing same. This placed facilities with populations at risk for LD, such as LTC facilities in jeopardy of extensive civil liability as a single outbreak could devastate its particularly vulnerable population should the method of prevention and or control selected prove to be ineffective.

To highlight the serious concern associated with LD in healthcare facilities and the need for immediate action, the CMS directive included the following facts;

- “The rate of reported cases of legionellosis has increased 286% in the US during 2000–2014.”



David Bush, Forry Ullman

- “Approximately 9% of reported legionellosis cases are fatal.”
- “19% of outbreaks were associated with long-term care facilities and 15% with hospitals”

This new directive from CMS will have a huge and beneficial impact on Long Term Care (LTC). Effective June 2 of this year long-term care facilities were required by CMS to have a plan in place for control of Legionella in their building water systems. The CMS directive is very clear: “Facilities must develop and adhere to policies and procedures that inhibit microbial growth in building water systems that reduce the risk of growth and spread of legionella and other opportunistic pathogens in water. This policy memorandum applies to Hospitals, Critical Access Hospitals (CAHs) and Long-Term Care (LTC). However, this policy memorandum is also intended to provide general awareness for all healthcare organizations.”

- Additionally the policy states that “Surveyors will review policies, procedures, and reports documenting water management implementation results” and to insure the following are completed." This includes:
 - A facility risk assessment conducted to identify where Legionella and other opportunistic waterborne pathogens could grow and spread in the facility water system.
 - Implement a water management plan that considers the ASHRAE industry standard and the CDC toolkit, and includes control measures such as physical controls, temperature management, disinfectant level control, visual inspections, and environmental testing for pathogens.
 - Specify testing protocols and acceptable ranges for control measures, and document the results of testing and corrective actions taken when control limits are not maintained.

Because the CMS directive specifically identified ASHRAE Standard 188 and the CDC toolkit based on ASHRAE 188, it has essentially codified ASHRAE Standard 188 as a national standard of care for the healthcare industry.

As stated in the CMS directive, LTC facilities represent a significantly higher rate of LD outbreaks than hospitals. Reasons that LTC facilities have higher outbreak rates than hospitals include that 1) typically in hospitals a minority of patient populations have significant risk factors for LD whereas in a LTC facility typically 100% of the residents have at least one risk factor for LD, age and many, residents will have two or more risk factors for LD and 2) LTC facilities are typically required to maintain hot water at a lower temperature than hospitals, a temperature even more conducive to Legionella colonization.

The risks are real and the cost of an outbreak are significant. Implementing an effective Legionella risk management policy for building water systems can be a very cost effective solution to controlling Legionella risk.

Here are a few do's and don'ts from experts who have been involved in outbreak investigations and litigations.

Do's

1. Have someone knowledgeable in building water system design, operation and maintenance complete an engineering assessment (audit) of the building water systems, someone with a good understanding of Legionella guidance documents. Use existing ASHRAE guideline 12-2000 or even better, the pending ASHRAE Guideline 12-2000R as guidance in completing the audit. And if you are going to hire an outside contractor to audit your systems it just makes sense that the contractor have some level of expertise in design, operation and maintenance of building water systems.
2. Develop a cross functional team to include at the very least an infection control or clinician person and a facilities / engineering person. It is also beneficial to have someone from housekeeping on this team as well.
3. Follow the rest of requirements from ASHRAE Standard 188.

Don'ts

1. Don't get a copy of a plan from someone, stick it in a binder put it on a shelf and consider yourself covered.
This practice of a place holder plan significantly raises the stakes as it is evidence that the facility was aware of, and willfully ignored the standard of care which could warrant the imposition of punitive damages. Implementation and scrupulous adherence to these recommendations are the best way to fulfill both the professional duty owed to patients by preventing or minimizing outbreaks, as well as the legal duty to meet the applicable standard of care.
2. Don't think of this issue as only an engineering system control issue only.
The CMS directive does focus solely on controlling pathogens in building water systems. However, clinical surveillance of patients, as recommended in CDC Environmental Infection Control Guideline (2003) is also an important component of a Legionella risk management plan in a healthcare facility.
Note: While the CDC EIC guideline remains a recognized standard of care for Legionella with respect to patient surveillance recommendations its' water system recommendations have been completely superseded by ASHRAE 188 and CDC toolkit.

Dave T. Bush, Esq., is a trial attorney at Forry Ulman in King of Prussia, PA. Tim Keane is a consulting engineer for Legionella Risk Management Inc. in Chalfont, PA.