

Sewer Backups, Whose Mess Is It?

When a sewer backup occurs, homeowners often look to the municipality or sewer district for help with cleaning up the mess. For many folks it seems almost impossible to imagine that a backup might not be the responsibility of their service provider. Furthermore, it may be tempting for a municipal sewer department or a sewer district to pay small losses as a gesture of good will, even when they know the loss is not the result of their negligence. However, it is never a good idea to pay losses for which you are not liable. Doing so only encourages an expectation by the public you serve that all sewer backups they may suffer will be paid by your entity. When the large loss occurs for which you are not negligent, and you decide it is too expensive a good will gesture to pay the loss, you can imagine how your reputation will be damaged. You may well find yourself the target of a lawsuit by an angry customer. Municipal or sewer district employees or representatives should never tell a property owner that the Municipality or Sewer District will “take care of” damages incurred from a sewer backup.

The governing state statute Title 30-A §3403 states:

“After a public drain has been constructed and any person has paid for connecting with it, the municipality shall maintain and keep it in repair to afford sufficient and suitable flow for all drainage entitled to pass through it, but its course may be altered or other sufficient and suitable drains may be substituted in its place. If the municipality does not so maintain and keep it in repair, any person entitled to drainage through it may have an action against the municipality for damages sustained by the municipality’s neglect”.

Therefore, a municipal sewer department or sewer district with a regular, annual sewer line maintenance program in effect (that is actually being carried out and documented) may be found not negligent when a sewer backup claim is presented. If the line has been maintained and an unforeseen event such as a flushed towel or a heavy rainstorm or flood causes the back up, then there is no negligence and hence no legal obligation to pay for the claim. One must remember that Pool coverage or commercial insurance coverage is not intended to replace the necessary expenditures for regular maintenance.

Since the statute and the Courts have not defined what constitutes reasonable maintenance, the Pool’s legal advisors have recommended the cleaning and inspection of every line at least once a year. This action would include pump systems that move the sewage as well. An entity that fails to properly maintain its sewer lines and public connections or says that they cannot afford to perform proper maintenance is running the risk of

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WELCOME!

New Members of the Volunteer Firefighter/Rescue Blanket Accident Program:

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paying for claims under the statute.

Whether a municipal sewer department or sewer district is provided coverage by the Maine Municipal Association Property & Casualty Pool or a commercial insurance company, the only amounts that should be paid for sewer backup claims are those for which the entity is legally liable. Sewer backups can be the result of many different events

and causes. It is important to report all claims to MMA or your commercial insurance company and allow them to investigate the circumstances of the loss, determine whether or not there was negligence on the part of your entity, and either decline or pay the loss. You need not be the “bad guy” who declines losses, but you can always take credit for being the “good guy” when a legitimate loss is paid by MMA or your commercial insurance carrier.

Public Access Automatic External Defibrillators (AED)

According to the American Heart Association, about 1000 Americans die from sudden cardiac arrest each day. It is also estimated that 20,000 to 100,000 people per year could survive a sudden cardiac arrest episode if defibrillation could be applied in the first minutes of such an attack. In recent years, this has led to a national campaign for “public access to defibrillation” or PAD. The goal of this campaign is to make automatic external defibrillators (AEDs) available in private and public sector facilities where large numbers of people gather or where there are people at high risk for sudden cardiac arrest. As a result, AEDs are becoming more common in arenas, malls, schools, medical offices, office buildings, and campgrounds etc. each year.

Public access to AEDs is a logical extension of a process that began in the early 1970’s, to shorten what medical care providers call the “chain of survival”. Simply put, the chain of survival strives to improve a person’s chances of surviving a sudden cardiac arrest through 4 “links” in a chain. These are: early access into the emergency care system (e.g. 911), early application of cardio-pulmonary resuscitation (CPR), early defibrillation, and early

application of advance cardiac life support techniques. Recent decades have seen vast improvements in access to EMS, such as E-911, Emergency Medical Dispatch, and cell phones. CPR, once applied only in medical facilities, is now a skill possessed by a significant portion of the general public and a required competency for many jobs. Advanced cardiac life support techniques, once restricted to use in hospitals, can be provided on site by paramedics within minutes of a 911 call, in many communities.

Advances in electronics and computer technologies has produced a generation of small portable automatic external defibrillators that are self-testing, reliable, talk users through their use with a synthesized voice, and will allow the user to “shock” only a heart that is suffering from a non-productive rhythm for which a shock is appropriate. These devices are available for \$2000 or less and numerous public and private grant programs have made them common sights in many public buildings in Maine.

There was early resistance to placing AEDs in facilities due to concerns over liability issues. As has been the case with any similar improvement in first aid type medical intervention, these concerns are rapidly giving way to public acceptance of AEDs and a public expectation that they will be present in certain types of facilities. It is predictable that in a few years, public access AEDs will be the accepted “standard of care” for facilities where large numbers of people are present.

Studies have shown that in areas of the country

The Municipal Risk Manager

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Publisher: Kathryn Norton, CIC

Editor: Marcus Ballou; *Layout Designer:* Jaime G. Clark

P.O. Box 9109, Augusta, ME 04332-9109

1-800-590-5583 or (207) 626-5583

where defibrillation is only available from EMS responders with response times over 5 minutes, the survival rate for sudden cardiac arrest is 1-2%. In areas where CPR and defibrillation are consistently applied within 5 minutes, the survival rate is 30%. So there is an obvious public safety and employee safety benefit to providing public access AEDs.

That said, if you have an AED in one or more facilities, or are considering a public access AED, there are some basic risk management practices that should be implemented.

First, the Maine AED Statute (22 MRSA Section 2150) requires that anyone who owns or leases an AED consult with a licensed physician for technical assistance in selection, location, training of potential operators and a protocol for use and post-use review. Before an AED is placed in service for use, a written protocol should be developed and approved in writing by your consulting physician. This protocol should be incorporated into the first aid/medical emergency section of your facility's emergency plan. It should address not only when AED use is appropriate and not appropriate, but also location, user selection and training, inspection/maintenance, and post use medical critique. This protocol should be reviewed periodically with all of your trained users.

Second, you must notify Maine EMS that an AED is present in your facility. It is also good practice to directly notify your local EMS responders and dispatch center that a public access AED is available at your facility.

A crucial component of implementing an AED program is designating and training a sufficient number of users. There should be enough individuals trained so that someone is available any time that your facility is occupied for normal business, and extracurricular/special events. Maine law requires that anyone using an AED must have completed an American Heart Association, American Red Cross, or Maine Department of Public Safety approved AED training course. It is important to understand that "public access" to AEDs does not mean simply making a unit available to anyone. According to the U.S. Department of Health and Human Services: "Public access to AEDs does not mean that any member of the public who witnesses an event should be able to use an AED. Public access refers to the

accessibility of the device itself. While AEDs are reasonably uncomplicated to use, the AED should be used only by persons who have received proper training and education, and have been certified by a competent authority. Persons without these basic credentials should not use the device".

Of course this leads to consideration about placement of AEDs within facilities. The goal is rapid access to the unit(s) by trained persons during all hours that the facility is open. Vandalism and misuse by untrained individuals is also a concern. Obviously, placing them behind counters or other "out of sight" locations, as well as behind locked doors would be a poor emergency preparedness practice. There are commercial wall containers available that allow rapid access but require breaking out a panel or breaking a seal to allow access to persons without a maintenance access key. The use of such containers in readily accessible and visible locations seems like a good compromise. A sign or label indicating that the device is "provided for use by trained persons only" is also a good idea.

Another consideration in selecting a location for an AED is proximity to other first aid and emergency equipment, including telephones. Maine law requires a person using an AED to make a reasonable effort to contact EMS first. Activation of the EMS system is the first "link" in the chain of survival and the EMS responders that it brings are the important fourth link.

Assisting someone who has suffered sudden

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WELCOME NEW MEMBERS:

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cardiac arrest involves CPR and the associated potential exposure to bodily fluids. The victim's collapse, or an accident leading to the arrest can also result in bleeding. For this reason, the AED case should include basic personal protective equipment for infection control. This should include one or more CPR barrier devices, several pairs of medical gloves and eye protection. A victim must be reasonably dry and on a dry surface to allow safe use of an AED. If an AED is in place near a pool or similar wet area, a small cache of disposable high absorbency towels should also be considered.

Finally, like any other piece of emergency equipment in your facility, such as emergency lights, fire extinguishers and exit signs, AEDs require a documented program of inspection and maintenance. These units typically perform an automatic daily test and have an alarm or display to warn that something is wrong. Pads and batteries have limited shelf life and expiration dates printed on

them. Your protocol should include inspection and maintenance of the AED as recommended by the manufacturer's manual. At a minimum, this should include a monthly visual check and case inventory to ensure that the unit is ready for use in an emergency. A written log of all inspections, maintenance, battery replacement, and post use restoration should be maintained.

With a little care and forethought, the decision to make a public access AED available in a municipal facility can be an example of good risk management practice. It can project a positive image about concern for the safety of building occupants, help meet the public expectations of good emergency preparedness in the post-9/11 world, and increase the chances that a sudden cardiac arrest victim will survive, and regardless of the outcome, help those involved in such a traumatic event, by providing knowledge that all four links of the "chain of survival" were in place.

For more information about Public Access Automatic External Defibrillators see:

American Heart Association, AED Programs Q & A:

<http://www.americanheart.org/presenter.jhtml?identifier=3011859>

Maine Department of Education, AED in Schools:

<http://www.maine.gov/education/sh/AEDs06.rtf>

Maine's AED Statute:

<http://janus.state.me.us/legis/statutes/22/title22sec2150-C.html>

ONLINE SAFETY TRAINING STILL GOING STRONG!

The Online Safety Training provided since October 2004 on Maine Municipal Associations website continues to be enthusiastically embraced by our members. Through February of this year 4,694 registered users representing 373 members have taken 18,302 courses. As a result of this success, Risk Management Services has recently extended its agreement with FirstNet Learning through March 2008 adding 10,000 uses and four new course topics.

The online training is offered to members of the

Property and Casualty Pool and the Worker's Compensation Fund at no cost to members. There are seventeen courses (soon to be twenty-one) offered, ranging in length from 15 minutes to 2 1/2 hours. Classes can be taken anywhere that the registered user is able to access the Internet. To start using the online training, login to the website at: <http://www.memun.org/RMS/LC/default.htm>, select the Online Safety Training link and follow the instructions to register and begin taking your classes.