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SYNOPSIS
Requires DEP, DOH, owners or operators of certain public community water systems, and owners or operators of certain buildings or facilities to take certain actions to prevent and control cases of Legionnaires' disease.

CURRENT VERSION OF TEXT
As reported by the Senate Budget and Appropriations Committee on June 24, 2024, with amendments.

AN ACT concerning Legionnaires' disease and supplementing P.L.1977, c.224 (C.58:12A-1 et seq.) and Title 26 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in sections 1 through 4 of P.L. , c. (C.) (pending before the Legislature as this bill):

"Disruption of the public community water system" means any disruption that has the potential to lessen the quality of the water delivered, including increasing the risk of exposure to pathogens such as *Legionella* bacteria. "Disruption of the public community water system" shall include, but not be limited to: (1) a change in the water treatment process; (2) an unplanned event that results in catastrophic issues that disrupt typical water system operations; (3) a change in source of the drinking water; and (4) any other conditions that the Department of Environmental Protection finds may lead to a potential risk in the quality of water.

"Public community water system" means the same as the term is defined in section 2 of P.L.2021, c.183 (C.58:12A-41).

2. a. Notwithstanding any other provision of law, or rule or regulation adopted pursuant thereto, to the contrary, the owner or operator of a public community water system, which has more than 100 service connections, and which is served fully or partially by surface water or groundwater under the influence of surface water, or any other public water system, as determined by the Department of Environmental Protection for the protection of public health, shall maintain:

(1) for systems utilizing chlorine as a disinfectant, a minimum detectable disinfectant residual of at least 0.3 milligrams per liter of free chlorine in all active parts of the public community water system at all times; and

(2) for systems utilizing chloramine as a disinfectant, a minimum detectable disinfectant residual of at least 1.0 milligrams per liter of monochloramine in all active parts of the public community water system at all times.

b. The Department of Environmental Protection shall, within 12 months after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), develop and publish on its Internet website best management practices for public community water systems to discourage the growth and potential distribution of pathogens such as *Legionella* bacteria. The best management practices shall include, but not be limited to, information regarding:

- (1) identification of areas of aging infrastructure, dead ends, or components prone to biofilm accumulation;
- (2) types of disruptions in the water distribution system;
- (3) flushing details and schedule;
- (4) disinfectant residual maintenance;
- (5) storage tank maintenance;
- (6) identification of areas of low water use, stagnation, or low pressure;
- (7) monitoring and testing;
- (8) water age management; and
- (9) other measures the Department of Environmental Protection deems necessary for the optimization of water systems.

c. No later than six months after the promulgation of rules regulations by the Department of Environmental Protection pursuant to section ¹[3] ⁴ of P.L. , c. (C.) (pending before the Legislature as this bill), each public community water system that is subject to the provisions of subsection a. of this section shall develop and implement a distribution system maintenance plan to comply with the provisions of 1 through 4 of P.L. , c. (C.) (pending before the Legislature as this bill), in accordance with the best management practices developed pursuant to subsection b. of this section and any applicable rules and regulations adopted by the department. The public community water system shall annually submit to the department a statement certifying that the public community water system has developed and implemented a distribution system maintenance plan pursuant to the provisions of this section.

3. a. The owner or operator of a public community water system that is subject to the provisions of subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) shall provide a record of a disruption of the public community water system to the Department of Environmental Protection via document upload or form submission to a data management system established by the Department of Environmental Protection pursuant to subsection b. of this section, within 72 hours of the occurrence of the disruption of the public community water system.

b. No later than 24 months after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the Department of Environmental Protection shall establish a data management system for the receipt of records by a public community water system of any disruption, and, on its Internet website, a dashboard of publicly accessible and searchable

records of disruptions of the public community water system received by the Department of Environmental Protection pursuant to subsection a. of this section.

c. The requirements of subsection a. of this section shall not become operative until the Department of Environmental Protection has developed a data management system for the submission of records of disruptions of the public community water system.

4. a. No later than 24 months after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the Department of Environmental Protection, in consultation with the Department of Health, shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to implement the provisions of P.L. , c. (C.) (pending before the Legislature as this bill).

b. The rules and regulations adopted pursuant to this section shall establish requirements for public community water systems with more than 100 service connections to discourage and minimize growth and potential distribution of pathogens such as *Legionella* bacteria in the water system, and shall include, but not be limited to:

(1) criteria to be used by public community water systems to develop distribution system maintenance plans ¹, including, but not limited to, frequency of required disinfectant residual monitoring¹ ;

(2) requirements for a public community water system to certify its distribution system maintenance plan and provide the plan to the department upon request;

(3) the criteria for what would constitute a failure to comply with a distribution system maintenance plan;

(4) criteria for identifying disruptions of the public community water system; and

(5) requirements for customer notifications during times of increased risk of *Legionella* bacteria exposure, in accordance with similar notification requirements in P.L.1977, c.224 (C.58:12A-1 et seq.), including, but not limited to, a requirement to provide information about the risks of *Legionella* bacteria and measures consumers can take to reduce or eliminate exposure to *Legionella* bacteria; and

(6) penalties, in accordance with the provisions of section 10 of P.L.1977, c.224 (C.58:12A-10), for failure to maintain the minimum detectable disinfectant residual required pursuant to subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), failure to comply with a

certified distribution system maintenance plan, failure to comply with notification requirements, or any other violations of the provisions of P.L. , c. (C.) (pending before the Legislature as this bill).

5. a. As used in this section:

"De-identified data" means information that does not identify an individual and for which there is no reasonable basis to believe that the information can be used to identify an individual, and which meets the requirements for de-identification of protected health information under the "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191, and any regulations adopted pursuant thereto by the Secretary of the United States Department of Health and Human Services.

b. For each reported diagnosis of Legionnaires' disease in the State, the Department of Health, or a local health officer pursuant to subsection f. of this section, shall conduct an epidemiological investigation to ascertain potential sources of infection consistent with the provisions of this section and the procedures and guidelines established pursuant to subsection c. of this section.

c. The Department of Health shall develop procedures and guidelines regarding suspected outbreaks of Legionnaires' disease and the case investigation of reported diagnoses of Legionnaires' disease pursuant to subsection b. of this section, including, but not limited to:

(1) documentation of any disruption of the public community water system, as defined in section 1 of P.L. , c. (C.) (pending before the Legislature as this bill), of the water system serving the primary residence of the individual with a confirmed case of Legionnaires' disease or other water exposure points identified pursuant to paragraph (3) of this subsection;

(2) provisions for the investigation of potential sources of exposure to *Legionella* bacteria from fixtures, water-using equipment, or features at the individual's residence including water exposures external to the residence such as irrigation, hoses, or water-based equipment and devices;

(3) provisions for the investigation of potential sources of exposure to *Legionella* bacteria from water exposure points in locations the individual visited in the 14 days preceding infection, if appropriate; and

(4) procedures for determining when sampling of water fixtures identified as potential sources of exposure in paragraphs (2) and (3) of this subsection shall be performed, and procedures for performing such sampling.

d. As part of an investigation of a confirmed case of Legionnaires' disease, the Department of Health or the local health officer may require the owner or operator of a building

suspected to be a source of *Legionella* bacteria exposure to test and mitigate the presence of *Legionella* bacteria consistent with the procedures and guidelines established by the department. The owner or operator shall report to the department the results of any environmental testing performed as part of the investigation. For the purposes of this subsection "building" shall not include any residential property with four or fewer dwelling units.

e. The Department of Health or the local health officer may require the owner or operator of a building suspected to be a source of *Legionella* bacteria exposure to provide notice in a form and manner specified by the department. If notice is required in a municipality in which the primary language of 10 percent or more of the residents is a language other than English, the owner or operator shall provide the notice in both English and the other language to potentially exposed individuals.

f. The Department of Health may delegate its responsibilities and duties pursuant to this section as deemed appropriate for conducting all or part of the case investigation required by this section to a local health officer having jurisdiction over the locality in which a patient diagnosed with Legionnaires' disease lives, frequently visits, or is employed ¹, subject to the resources available to the local health officer¹.

g. The Department of Health shall establish on its Internet website a dashboard accessible to the public and healthcare providers that provides de-identified data related to all reported cases of Legionnaires' disease, with the goal of providing near-real-time incidence rates in affected communities. The Department of Health shall include information concerning aggregated data of all reported cases of Legionnaires' disease with the greatest degree of specificity consistent with ensuring that no information that could compromise protected health information, or patient identity, is included in such reporting.

6. a. No later than 24 months after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the owner or operator of a building or facility that meets any of the following criteria shall develop a water management program to minimize the growth and transmission of *Legionella* bacteria in the building's or facility's water system, consistent with the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard 188-2018 or subsequent versions thereof, or comparable standards adopted by a nationally-recognized, accepted, and appropriate organization:

(1) a general or specialty hospital that provides in-patient services and is licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.);

(2) a nursing home, assisted living facility, comprehensive personal care home, residential health care facility, or dementia care home licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.);

(3) a building containing a whirlpool, spa, pool, open-circuit or closed-circuit cooling tower or evaporative condenser that provides cooling or refrigeration for a heating, ventilation, air conditioning, or refrigeration system, ¹indoor¹ ornamental fountain, mister, atomizer, air wash, humidifier, or other non-potable water system or device that releases water aerosols in the building or on the property upon which the building is located. A building with a device listed in this paragraph shall implement a water management program for the listed device and need not implement a water management program for the entire building unless otherwise indicated by this subsection;

(4) a federal, State, county, or privately owned or operated correctional facility with one or more centralized potable hot water systems;

(5) ¹a residential high-rise structure with six or more floors and one or more centralized potable water-heater systems;

~~(6)~~¹ a building with one or more centralized potable water-heater systems shared by ¹~~[50]~~ ¹25¹ or more housing units for transient use, including, not but limited to, a hotel or motel;

¹~~[(6)]~~ ~~(7)~~¹ a residential building with a centralized potable water-heater system that is shared by 25 or more housing units, which serves as subsidized housing designated for individuals who are 62 years of age or older or who have a disability, or is designated as senior housing and is subject to the provisions of P.L.1986, c.103 (C.52:27D-330 et seq.);

¹~~[(7)]~~ ~~(8)~~¹ a residential, commercial, institutional, or industrial building or facility, including a hotel or motel, not otherwise required to implement a water management program, but which has been determined by the Department of Health or a local health officer to have been associated with an outbreak of Legionnaires' disease. The Department of Health or local health officer shall determine the period during which a water management program is required pursuant to this paragraph in order to address the increased risk of *Legionella* contamination of the building or facility.

b. (1) A water management program for a building or facility that meets the criteria of paragraphs (1) or (2) of subsection a. of this section, that has been determined by the Department of Health or a local health authority to have been associated with an outbreak of Legionnaires' disease, or for which periodic water sampling for bacteria is recommended by the federal Centers for

Disease Control and Prevention shall include periodic water sampling and testing for bacteria in accordance with the rules and regulations promulgated by the Department of Health pursuant to section 8 of P.L. , c. (C.) (pending before the Legislature as this bill).

(2) A water management program for a building or facility that does not meet the criteria described in paragraph (1) of this subsection may include periodic water sampling and testing for bacteria.

(3) All sampling and testing carried out pursuant to this subsection shall include, but not be limited to, testing for the presence of *Legionella Pneumophila*, and shall be conducted in a manner consistent with:

(a) rules, regulations, and best practices developed by the Department of Health; and

(b) the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard 188-2018 or subsequent versions thereof, or comparable standards adopted by a nationally recognized, accepted, and appropriate organization.

(4) The owner or operator of a covered facility or building shall follow ASHRAE Standard 188-2018 and guidelines established by the federal Centers for Disease Control and Prevention in interpreting and responding to positive test results. The Department of Health shall establish procedures for the reporting of positive test results for *Legionella* bacteria received during testing carried out pursuant to this subsection.

c. When a person required to implement a water management program pursuant to this section has complied with the requirements of this section, the person shall post a written public notice on the premises in a location easily accessible to building occupants that such a program has been implemented.

d. No later than 12 months after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the Department of Health shall develop and make available on its Internet website guidance documents for the development and implementation of water management programs pursuant to this section, including guidance documents for complying with record-keeping requirements, and best practices for periodic water sampling and testing.

e. The owner or operator of a building or facility required to implement a water management program pursuant to this section shall establish documentation concerning all procedures and shall maintain all records related to these procedures and their implementation and make them available upon request to an employee of the Department of Community Affairs, the Department of Environmental Protection, the Department of Health, or any other department or agency with license or

inspection authority for the facility or building in order to confirm that a water management program was developed. The Department of Community Affairs, the Department of Environmental Protection, the Department of Health, or any other department or agency with license or inspection authority for the facility or building shall not be required to evaluate or otherwise review a water management program unless required for an investigation of a case of Legionnaires' disease ¹in accordance with procedures developed by the Department of Health¹ pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

f. (1) No later than 27 months after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the owner or operator of a building or facility that meets any of the criteria set forth in paragraphs (1) through (7) of subsection a. of this section shall implement the procedures outlined in their personalized water management program. Newly constructed or repurposed buildings or facilities shall confirm that the water management program mitigates the potential for human exposure to *Legionella* bacteria prior to commissioning.

(2) The owner or operator of a building or facility that meets any of the criteria set forth in paragraphs (1) through (7) of subsection a. of this section shall maintain on the building or facility premises for at least five years: (i) the written water management program; (ii) documentation and records concerning all procedures conducted, including the results from any water testing carried out pursuant to subsection b. of this section; and (iii) all other relevant documentation on the implementation of the water management program. Such records shall be made available to the Department of Health immediately upon request.

g. (1) The owner or operator of a building or facility who fails to implement or demonstrate compliance with a water management program required pursuant to this section, fails to report a positive *Legionella* water system test pursuant to the procedures set by the Department of Health, fails to test for or mitigate the presence of *Legionella* as required by the Department of Health or the local health officer pursuant to subsection d. of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), or fails to provide notice pursuant to subsection e. of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be subject to a civil penalty of not more than \$2,000 for a first violation, and not more than \$5,000 for a second or subsequent violation, except that the owner or operator shall be subject to a civil penalty of not more than \$10,000 for any violation which causes serious

injury or death to any person. Penalties imposed pursuant to this paragraph shall be collected by the State in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and the municipal court shall have jurisdiction over proceedings for the enforcement of the penalties provided by this paragraph.

(2) Whenever the Department of Health determines that any person is in violation of a provision of this section or section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), the department may assess a civil administrative penalty of not more than \$2,000 for a first violation, and not more than \$5,000 for a second or subsequent violation, except that the person shall be subject to a civil administrative penalty of not more than \$10,000 for any violation which causes serious injury or death to any person. In assessing a civil administrative penalty, the commissioner shall consider the severity of the violation, the measures taken to prevent further violations, and whether the penalty will act as an appropriate deterrent. Prior to the assessment of a civil administrative penalty under this paragraph, the person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall identify the section of the statute, rule, regulation, or order that was violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil administrative penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 days from receipt of the notice within which to deliver to the Commissioner of Health a written request for a hearing. After the hearing and upon finding that a violation has occurred, the Commissioner of Health may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 35-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order.

(3) The Department of Community Affairs, the Department of Environmental Protection, or the Department of Health, or any other department or agency with license or inspection authority for the facility or building, may institute a civil action for injunctive relief in the Superior Court to enforce the provisions of this section or section 5 of P.L. , c. (C.) (pending before the Legislature as this bill) and to prohibit and prevent a violation of these sections, and the court may proceed in the action in a summary manner.

h. The provisions of this section shall not apply to a residential property with four or fewer dwelling units.

7. a. The Department of Health, in consultation with the Department of Environmental Protection, shall develop a public awareness campaign and targeted consumer education program to educate consumers, especially vulnerable populations, concerning the environmental sources of *Legionella* bacteria, the movement of *Legionella* bacteria through water distribution systems, the notification requirements of P.L. , c. (C.) (pending before the Legislature as this bill) and how the requirements impact consumers, and the methods to control *Legionella* bacteria in a person's home. The public awareness campaign and education program shall include, but not be limited to, information on the relationship between the risks of the proliferation of *Legionella* bacteria and hot water, the temperature requirements for medical devices, expansion tanks, hot tubs, whirlpools, spas, pools, air conditioning systems, ornamental fountains, or other equipment or devices that release water aerosols in a person's home or on a person's property, and the related risks associated with the inhalation by vulnerable populations of water droplets containing *Legionella* bacteria.

b. No later than one year after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), and annually thereafter, the Department of Health, in consultation with the Department of Environmental Protection, shall submit a report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, which shall include:

(1) the number of cases of Legionnaires' disease in the State reported in each of the previous 10 years;

(2) the number of reported water sampling results in public community water systems in the past year received by the Department of Environmental Protection that indicate the presence of *Legionella* bacteria;

(3) the number and type of violations of the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) for which penalties were assessed;

(4) recommendations as to whether the minimum detectable disinfectant targets established pursuant to subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) should be increased in order to minimize the growth and transmission of *Legionella* bacteria; and

(5) any recommendations for legislative action as may be necessary to further control *Legionella* bacteria in the public water supply and affected buildings.

8. No later than 24 months after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the Department of Health, in consultation with the Department of Environmental Protection, shall adopt rules and regulations

pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to implement the provisions of P.L. , c. (C.) (pending before the Legislature as this bill). The rules and regulations shall be consistent with the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard 188-2018, or subsequent versions thereof, or comparable standards adopted by a nationally recognized, accepted, and appropriate organization.

9. This act shall take effect immediately.

