States Set to Pass Laws Limiting Liability for Lay Users of Automated External Defibrillators

Individual states appear ready to pick up the torch for limiting the liability of lay users of automated external defibrillators (AEDs), even though hopes for a national law were extinguished in the last congressional session. The Cardiac Arrest Survival Act that was introduced in the last Congress is being revamped before it is reintroduced, said Pat Bowser, who coordinates the public access defibrillation program of the American Heart Association.

But states appear to be passing their own laws without the impetus of federal legislation, said Bowser. “There is going to be a group pulled together in the next couple of months to look at it (federal legislation) to see if it is needed and to see how it might be structured to be effective. The group will also try to determine if there is really a need for federal regulation around this issue,” she said.

Currently, a coalition with the AHA as the primary driving force is pushing for laws with certain basic requirements and protections, she said. The model legislation that the coalition is proposing requires the following:

- Persons who may be in a position to use an AED shall have received either AHA training in cardiopulmonary resuscitation (CPR) and AED use or an equivalent, nationally recognized course in those areas.
- The AED must be maintained and tested according to the manufacturer’s guidelines.
- A licensed physician or medical authority must ensure compliance with the requirements for training, notification, and maintenance.
- A person who uses the AED to give emergency care or treat another person in cardiac arrest must activate the emergency medical services (EMS) system as soon as possible and report the use of the AED in those instances to the physician or medical authority under whose guidance the defibrillator is being used.
- Emergency communications or vehicle dispatch centers must be notified of the existence, location, and type of AED that has been placed in a particular location.

If those conditions were met, the legislation would render immune from lawsuit or other civil liability any person who in good faith and without compensation used the AED in an emergency situation to render care to a person in cardiac arrest. The law would protect the AED user in the event of personal injury as a result of the care provided or as a result of providing or arranging for further medical treatment, as long as the person acts in a prudent manner.

The immunity from lawsuit also includes the physician or medical authority under whose supervision the AED has been placed in a particular location, as well as the person who trained the individual using the device in CPR and defibrillator use and the person who owns the site where the AED is located. However, the immunity does not apply if the injury is the result of gross negligence or wanton misconduct in the use of the device. The immunity does not apply to anyone using an AED in an emergency setting if the person is acting as a Good Samaritan as already provided under state law.

“Most states will pass laws in 1999,” said Bowser, noting that 2 or 3 might be holdouts. Twenty states have already passed limited liability legislation, she said, and most other states have already drafted such legislation.

“It won’t save lives by itself,” she said. She said the AHA views public access defibrillation as an attempt to strengthen the “chain of survival” that has become the catch phrase in emergency medicine circles. There has been little resistance outside the trial lawyer community, she said. “They don’t like removing the potential for liability,” said Bowser. “But it’s important to public health.” Nearly every state’s EMS director has supported the legislation, she said. A number of other organizations are coming up with their own statements supporting public access defibrillation and the potential for limiting liability, she said. Valentine Fuster, the AHA’s current president, made a point of mentioning the need for legislation during the recent Scientific Sessions in Dallas, Tex. It is an important part of the organization’s quest to reduce deaths and disability from heart disease, he said.

“Every minute a patient [whose heart has stopped] has not been defibrillated, his or her chance of survival goes down 10%,” said Rose Marie Robertson, MD, professor of medicine at Vanderbilt University Medical Center and a scientific chair of the AHA’s 71st Scientific Sessions in Dallas. She said public access defibrillation is a cost-effective means of reducing the death rate from heart disease.

“Basically, we’ve come a long way,” said Robert O’Rourke, distinguished professor of cardiovascular diseases at the University of Texas Health Science Center at San Antonio. “Now that we’ve gained momentum is the time to get the bills through.”

Although he applauded state efforts, O’Rourke is not convinced that national or even international laws are unnecessary. One of the most effective uses of AEDs has been on airplanes, he said. “Who decides if I’m going to Australia, and I’m over the Pacific Ocean and off the coast of Hawaii? What jurisdiction do I come under? I have no idea,” he said.

However, the ability to use AEDs in the air is critical because precious, life-saving minutes can be lost if a plane must land before a patient can be defibrillated. Already, there have been
several “saves” on airplanes that carry the devices, said O’Rourke. “Finally, we have the right tools to save lives in the air.” Limited liability should be available to all users of AEDs, nationally and internationally, he said.

Robert Swor, DO, has been involved with the public access defibrillation movement in his capacity as immediate past president of the National Association of EMS Physicians. He supports the notion of legislation limiting liability for lay AED users. However, he said, “The people who are buying the device need to make sure there is a good system in place to provide good care. We know the devices work. Now we need to work on the delivery system.

“Reality is the biggest stumbling block. We have to define where this is a good idea and where it is not going to be valuable. We can’t put it everywhere. It is not a one-size-fits-all kind of project. The fire extinguisher model doesn’t intuitively make sense to me,” said Swor, an emergency physician at William Beaumont Hospital in Royal, Mich.

States that provide liability immunity to lay users of AEDs are as follows: Alaska, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa*, Kansas, Massachusetts, Minnesota, Missouri, Nevada, New York, Pennsylvania, Rhode Island, Tennessee, Virginia, and Washington.

States that allow laypeople to use AEDs but do not provide liability immunity include California, Delaware, Utah, and North Carolina (use of AED not considered a medical act; immunity not addressed).

States with AED liability immunity bills pending include Ohio, Michigan, New Jersey, and Arkansas.

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